FRANCIS NEWTON THORPE, ESQ.

COMMISSIONER

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 1

STATE BUDGET SYSTEM—PRELIMINARY MEMORANDUM.

Harrisburg, December 16, 1919.

Hon. Wm. I. Schaffer,
Chairman of Commission.

Sir: I understand you desire a preliminary memorandum on The State Budget System.

I find that:

(1) 42 states have established a permanent state budget procedure of one kind or another.

(2) In addition, the 1919 legislature of Indiana has passed a joint resolution to amend the constitution by setting up a rather complete state budget system in the constitution itself.

(3) In addition, the 1917 legislature of Delaware enacted a law setting up a state budget procedure for one session of the legislature.

(4) In addition, Florida and Missouri have constitutional provisions for the submission to the legislature by the governor of estimates of the requirements of the state.

(5) Pennsylvania and Rhode Island are the only two states in the nation that do not fall within any of the four preceding groups.

(6) Three states (Maryland, Massachusetts, and West Virginia) have set up rather complete state budget systems in their constitutions.

(7) 39 states have set up more or less complete state budget systems by statute.

(8) Of the 42 states that have established a permanent state budget procedure, 22 provide for submission of the budget by the governor; 14 for submission of the budget by a body of which the governor is a member; 4 for submission of the budget by a body wholly or partially appointed by the governor; and 2 for submission of the budget by a legislative committee.

The procedure varies greatly in the different states, ranging all the way from a procedure which highly restricts the legislature to one which gives the legislature almost unlimited control of appropriations. A very good tabular statement of the various budget procedures will be found on pages 321-363 of the "Report of Reconstruction Commission to Governor Alfred E. Smith on Retrenchment and Reorganization in the (New York) State Government, October 10, 1919." There is in the Secretary's office a copy of this report. The most complete work which has been brought to my attention is "The Movement for Budgetary Reform in the States," by William Franklin Willoughby, D. Appleton & Co., New York, Publishers. There is a useful short article on the same subject by A. E. Buck in the August, 1919, number of the National Municipal Review, North American Building, Phila. These publications are also in the Secretary's office.

Perhaps the clearest way to give an idea of what is meant by a State Budget System is to give the text of a Constitutional provision which would put in force the simplest effective State Budget System that has been so far called to my attention. Such provision may be worded as follows:

On or before February Fifteenth of each odd numbered year, the Governor shall submit to the General Assembly a budget, which shall consist of an estimate of the needs of the Commonwealth for the two fiscal years next ensuing, including such appropriations as he deems proper for charitable and educational purposes; an estimate of the receipts of the Commonwealth for the same period; any recommendations he may wish to make as to sources of revenue with a bill or bills to carry such recommendations into effect; an appropriation bill covering all the estimated needs of the Commonwealth for the two fiscal years next ensuing; and such other statements, estimates, or recommendations as may be prescribed by law or as may be deemed pertinent by him.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to taxation submitted by the Governor.

The General Assembly shall have power to increase, decrease, strike out, or otherwise alter, any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both houses of the General Assembly, neither house shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the General Assembly, or shall have been submitted to the General Assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

After the General Assembly shall have finally acted upon the appropriation bill, it shall be unlawful to make any appropriation, whether new or additional, for any subject concerned in any item included in the appropriation bill at the time it was introduced or at the time it was finally acted upon

by the General Assembly, unless such new or additional appropriation shall have been requested by the Governor after the appropriation bill shall have been finally acted upon by the General Assembly.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 2

TAXATION—GRADUATED INCOME TAX.

ARTICLE IX SECTION 1.

Harrisburg, December 16, 1919.

Mr. George Wharton Pepper,
Chairman of Committee No. 4.

Sir: I understand you desire a memorandum on Graduated Income Taxes in Connection with the Provisions of Article IX, Section 1 and Possible Amendments Thereto.

Article IX, Section 1 provides:

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

The provisions quoted forbids a graduated income tax imposing upon large incomes a higher rate of taxation than upon small incomes. (Cope's Estate, 191 Pa. 1). In this case the Supreme Court declared unconstitutional an Act taxing direct inheritance which exempted inheritances of $5,000.00 and under. The Court took the position that a classification of property for the purposes of taxation based only on differences in quantity and imposing different rates of taxation is illegal.

If, therefore, it is desired to prevent the enactment by the General Assembly of a graduated income tax, no change in the present Constitution is necessary.

If it is desired to permit the imposition of such a tax, there are at least two possible ways in which this desire may be carried out: (1) By conferring on the General Assembly the power to enact "a graduated income tax;" or (2) by conferring on the General Assembly the power to classify the subjects of taxation according to quantity for the purpose of imposing different rates of taxation upon the different classes.

The first of these methods could be effected by amending Article IX, Sec. 1 of the Constitution as follows:

> Insert after the word "may" on line 4, the words: classify incomes according to quantity, exempt all incomes falling below the amount designated by law, and impose on any class of incomes a higher rate of taxation than the rate imposed on any other class in which the amount of the income is less, and may; so that the section as amended will read as follows: All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly *may classify incomes according to quantity, exempt all incomes falling below an amount designated by law, and impose on any class of incomes a higher rate of taxation than the tax imposed on any other class in which the amount of the income is less, and may* by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private corporate profit, and institutions of purely public charity.

The second method above referred to could be affected by amending Article 9, Sec. 1, as follows:

> Insert after the word "may" on line 4 the words: Classify the subjects of taxation according to quantity or value for the purpose of imposing graded or progressive taxes, including

the total exemption of one or more of such classes, and may; so that the Section as amended will read as follows: All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax and shall be levied and collected under general laws; but the General Assembly *may classify the subjects of taxation according to quantity or value for the purpose of imposing graded or progressive taxes including the total exemption of one or more of such classes, and may,* by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, or institutions of purely public charity.

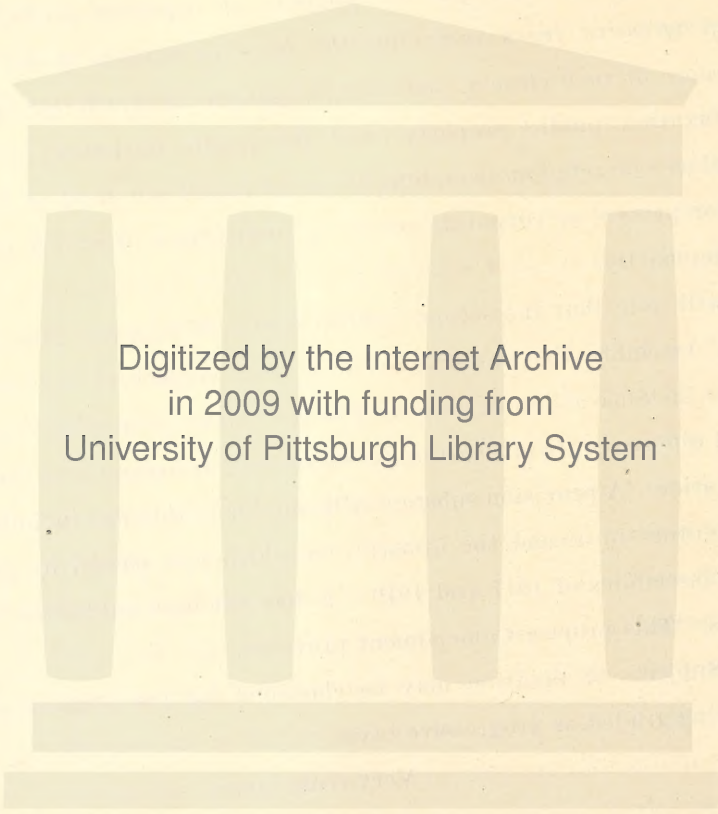
You will note that the second method would, if adopted, give the General Assembly the power to classify any subject of taxation, (such for instance as land), according to its "quantity or value," and impose a different rate of taxation on each class, or exempt any class from taxation. A provision substantially similar to this was included in a resolution to amend the Constiution which was passed by the General Assemblies of 1917 and 1919. It has not been submitted to the voters. This proposed amendment provides:

Subjects of taxation may be classified for the purpose of laying graded or progressive taxes.

Very truly yours,

WM. DRAPER LEWIS.

Secretary.



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Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 3

COUNTY OFFICERS—COMPENSATION.

Harrisburg, December 16, 1919.

Mr. Francis Newton Thorpe,
Chairman of Committee No. 3,

Sir: I understand you desire a memorandum on The effect of Article IX, Section 5, on the compensation of County Officers, and what, if any, amendment is necessary to restrict the compensation of some or all of these officers to definite salaries.

Article XIV, Section 5 of the Constitution provides:

Fees: The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive, into the treasury of the county or State, as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him.

The purpose of this section is obviously to put the officers of the larger counties on a strict salary basis, and to allow no county officer, whether of a large or small county, to receive both salary and fees.

The General Assembly passed the Acts of March 31, 1876, P. L. 13 to put this section in effect, providing that in counties with a popula-

tion of over 150,000 the salaries should be fixed at certain figures and that all other fees or requisites should be paid into the county or State treasury. In 1889 the Supreme Court decided (Phila. v. Martin, 125 Pa. 583) that the word "fees" did not include commissions, and that neither the Constitution nor the Act of Assembly meant to deprive county officers of extra compensation for doing work for the State.

It follows that a statute which allows to registers of wills, for instance, a commission on the inheritance taxes which they collect for the State, is a Constitutional statute. An effort was made by the Act of July 21, 1913, P. L. 878, to put the Register of Wills of Philadelphia County on a strict salary basis, but the effort failed because the Supreme Court decided that the Act was "local legislation" and therefore, unconsitutional. (Phila. v. Sheehan, 263 p. 449.)

A statute fixing the salaries of all county officers, or of all officers in counties of over 150,000, and depriving such officers of any compensation whatever other than salary would be entirely consistent with the present Constitution if no officer's salary was increased or diminished after his appointment or election. (Article III, Section 13.)

If it is desired to confine the compensation of all county officers to salaries regulated by law, a possible method would be to substitute for Article XIV, Section 5, the following:

> All county officers shall be paid by salary only, for services performed for the County, State, or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed.

If it is desired to confine the prohibition of any other method of compensation than salary, to county officers in counties of over 150,000, the desire could be effected by amending Article IX, Section 5, as follows:

> Strike out all after the word "salary" on line 7, and insert the following: When a salary is paid to a county officer such

salary shall be regarded as compensation for services performed for the County, State, or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed; so that the Section as amended would read: The compensation of county officers shall be regulated by law and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive, into the treasury of the county or State as may be directed by law. In counties containing over 150,000 inhabitants all county officers shall be paid by salary. When *a salary is paid to county officers such salary shall be regarded as compensation for services performed for the County, State or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed.*

If the first amendment, or any other similar amendment was adopted, in the schedule of the new Constitution, if one is to be adopted, due provision would have to be made as to the time when this section should take effect so as to allow the General Assembly to provide suitable salaries.

Yours very truly,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 4

TAXATION—SEPARATION OF LAND AND BUILDINGS.
ARTICLE 9, SECTION 1.

Harrisburg, December 16, 1919.

To George Wharton Pepper, Esq.,
Chairman of Committee No. 4,

Dear Sir: I understand that you desire a memorandum on The Validity, under the Present Constitution of a Statute Requiring the Separate Assessment of Land and of the Buildings and Other Improvements Thereon for Purposes of Taxation, with the Imposition of Different Rates of Taxation Upon These Two Kinds of Real Estate.

Article 9, Section 1, of the Constitution is the only provision which can suggest any doubt as to the constitutionality of such legislation. This section reads:

> All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private corporate profit, and institutions of purely public authority.

It might be argued that both land and improvements are real estate, and that to classify them separately for purposes of taxation

would be to violate the constitutional requirements of uniformity. No judicial determination of this question has come to my notice. But it seems to me that such a classification does not offend the Constitution.

The Supreme Court decided in Kitty Roup's Case, 81½ Pa. 211 (1874) that the new Court had not taken from the Legislation the right to classify the subjects of taxation.

In Commonwealth v. Canal Co., 123 Pa. 594 (1889) the Supreme Court decided that an act which taxed corporate and individual obligations upon different basis was constitutional. The matter of classification, the Court said, is wholly with the Legislature, provided it be "according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burden of taxation." Turning to examples of classification, the Court said: "Real Estate, for taxation, has been classified as seated and unseated, and for municipal purposes, may, perhaps, admit of further classification."

The kinds of classification which have been declared unconstitutional are those which are manifestly not founded upon any reasonable difference in the subjects of taxation and which, therefore, operate to discriminate arbitrarily against certain kinds of property and persons. Examples of such statutes which have been declared invalid for this reason are the Act of June 3, 1885, P. C. 71, which permitted the taxation of precisely similar lands at different rates, and the Act of June 15, 1897, P. L. 166 which imposed a tax upon the employers of foreign labor.

The validity of the division of municipal real estate into city, suburban, and farming classes, with different rate of taxation upon each, has never been seriously questioned. It appears to have been assumed by the Supreme Court in Erie's App., 3 Walh. 251, Williamsport v. Brown, 84 Pa. 438, and City of Erie v. Reed, 113 Pa. 468. This practice prevails today.

The General Assembly by the Act of May 15, 1913, P. L. 209 provided for the separation of land and buildings in tax assessments in cities of the second class (Pittsburgh and Scranton), and for two different rates of taxation. So far as I am aware the Constitutionality of this Act has not been called in question.

It is my opinion, therefore, that such an Act is constitutional, since the division of real estate into the two classes of land and improvements is an entirely reasonable classification.

I shall make a further search for decided cases arising under amalogous provisions in other state constitutions, and if I find any material shall submit a further memorandum.

Yours very truly,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 5

LEGISLATIVE—CHARITABLE APPROPRIATIONS.

Harrisburg, December 16, 1919.

Mrs. John O. Miller,
Commissioner.

Dear Madam: I understand you desire a memorandum on Possible methods of appropriation to charitable institutions.

Broadly there are three ways of appropriating money to charitable institutions.

1. A definite appropriation to a designated charitable institution made by separate bill.

This is the method prescribed by constitutional mandate in the present constitution.

ARTICLE 3, SECTION 15.

2. Definite appropriations to designated charitable institutions, two or more institutions, or all institutions of a particular class, or all insitutions, being included in a single bill.

If the amendment recommended by committee No. 1 (see report No. 6, Report folio page 13) is adopted the General Assembly would have the right to adopt this second method of appropriating money to charitable institutions.

3. The classification of charitable institutions not under the absolute control of the State by general law, a lump sum appropriation to all institutions of the particular class and a distribution of the

money appropriated to each class among those institutions which conform to standards and conditions fixed by law or by an executive agency (as a State Board of Charities) designated by law and authorized to establish such standards and conditions.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 6

MUNICIPAL BOND ISSUES—RECOMMENDATIONS—DEPARTMENT OF INTERNAL AFFAIRS—BUREAU OF MUNICIPALITIES

Harrisburg, December 18, 1919.

Dr. Edgar F. Smith,
Chairman of Committee No. 5.

Dear Sir: I understand that you desire a memorandum on Municipal Bond Issues from the Department of Internal Affairs, Bureau of Municipalities.

I herewith submit as exhibits "A", "B" and "C" a memoranda prepared by J. Herman Knisely, Chief of Bureau.

Very truly yours,
WM. DRAPER LEWIS,
Secretary.

EXHIBIT "A"

December 17, 1919.

Dr. William Draper Lewis,

Secretary of the Commission to Amend and Revise the Constitution, Harrisburg, Pa.

My dear Sir: This in reply to your letter of December 12th, addressed to Hon. James F. Woodward, Secretary of the Department of Internal Affairs.

I shall answer the questions propounded in the order in which they are given.

1. Information and data as to whether or not the Constitution should be amended to make bonds run for fifty years.

For certain purposes municipalities should undoubtedly have the right to issue bonds for a term of fifty years. The right to issue such bonds should apply to the purchase of land for parks, playgrounds and other public uses, for the construction of traffic subways and the abolition of grade crossings. Bonds for the term of fifty years are permitted to be issued under the constitutions of a number of states. One of the most recent comprehensive pieces of legislation can be found in the Pamphlet Laws of New Jersey 1916, page 525, being an act to "authorize and regulate the issuance of bonds and other obligations and the incurring of indebtedness, by county, city, borough, village, etc."

2. Whether there should be a provision giving the right for serial loans. (Showing the difference between straight bonds for fifty years and serial bonds).

We are rather inclined to the thought it should be mandatory upon a municipality to issue only serial bonds. There can be no question of their safety. They prevent misuse, distortion and juggling of sinking funds and are more economical. A comparison of the cost of a bond issue of $1,000,000 on a straight fifty year sinking fund

plan and a fifty year serial bond plan is attached hereto. (The comparison referred to is on file in the office of the Secretary of the Commission.)

3. Information and data as to the graduation of the borrowing power of the various cities, boroughs, towns and school districts based on population.

We do not know nor have we been able to find any constitutional provision or Acts of Assembly which permit the graduation of borrowing powers based on population. A reference to a blue print "Taxation Statistics Third Class Cities of Pennsylvania 1919" issued by this Bureau, would show that the assessed valuation per capita with a proper assessment usually increases with the increase in population.

4. Life of graded bonds, that is, whether or not the bonds should be issued for the life of the inprovement.

The tendency of all legislation is that no bond should be issued for a longer term than the life of the improvement. In Pennsylvania it has been the common practice, except in rare instances, to issue bonds for the limit of thirty years as permitted by the Constitution. This has resulted in a great abuse. This abuse should no longer be permitted or tolerated.

5. Special assessments.

Mr. B. A. Haldeman, Chief of the Division of City Planning and Municipal Engineering of this Bureau, has submitted to you a paper covering that subject. (Exhibit "B.")

6. Information as to the indebtedness of the larger cities of the country based on population, and based on assessable value of property, and on some per capita basis, and the relation of the indebtedness to the assessed valuation.

A tabulation of ten of the largest cities of the United States as well as the City of Scranton, showing this information, is attached hereto. (The tabulation referred to is on file in the office of the Secretary of the Commission.)

7. Any provisions as to the right to issue bonds for current purposes.

No provision should be made to permit the issuing of bonds for current purposes or expenses and no bonds should be issued except for a permanent improvement chargeable to capital account. However provision should be made for the right to issue notes in anticipation of revenue. Without such provision it would be impossible for the smaller municipalities of the Commonwealth to conduct their affairs. In most instances their moneys are not received until July and in some instances as late as October and the fact they are not allowed to borrow in anticipation of revenue has resulted in great abuses of the borrowing authority. In many instances notes have been issued with the thought they would be paid off during the current year but have been allowed to run for years and resulting finally in a thirty year bond issue. We are firmly of the opinion that this right to issue notes in anticipation of revenue should not be given without the approval of the state officer who could see the law is complied with. On the matter of notes in anticipation of revenue I would refer you to copy of Special Bulletin of the Pennsylvania Department of Labor and Industry containing the Proceedings of the Fifth Annual Convention of the Pennsylvania State Association of Boroughs, page 61, "State Regulation of Municipal Indebtedness" by Charles F. Gettemy, Director of Massachusetts Bureau of Statistics, a copy of which is enclosed herewith. The careless and lax methods by which indebtednesses are incurred is shown in a report on 201 boroughs relating to "Bonded Indebtedness, Notes Owing and Sinking Fund." (Exhibit "C.")

With the limited time permitted we have examined the constitutions of all the states of the United States and have copied all their provisions as they relate to municipal indebtedness, which information is enclosed herewith. (On file in the office of the Secretary of the Commission.)

Should your Commission desire the amendments and provisions of the constitutions of the United States relating to Home Rule, this information can be furnished you.

I am enclosing herewith a list of the population of all cities, boroughs and first class townships of the Commonwealth, giving their population and placed in groups of one thousand. These municipalities have a population approximating 6,559,089, with the State's estimated population of 9,040,599, or over 72 per cent of the population of the State residing in incorporated municipalities. (On file in the office of the Secretary of the Commission.)

The Secretary of Internal Affairs, Mr. James F. Woodward, has requested me to say any aid that can be rendered by him or any of the Bureaus of his Department is at your command.

Yours very truly,
J. HERMAN KNISELY,
Chief, Bureau of Municipalities.

EXHIBIT "B"

December 12, 1919.

Wm. Draper Lewis,

Secretary of the Commission on Constitutional Amendment and Revision.

My Dear Sir: Pursuant to the request of your Committee that this Bureau furnish it with suggestions as to changes which may be desirable in the Constitution of the State to further the interests of community planning and development and to provide for the acquisition of property and the payment of the cost of certain improvements, we are submitting the following for your consideration.

It is quite probable that the present Constitution grants sufficient authority to the Legislature to create city planning commissions, at least this would seem to be the case since the creation of such commissions has been authorized in cities of all classes in the State. It is possible also that it would be competent for the Legislature to grant city planning powers to counties, townships and boroughs to the same extent such power is granted to cities.

Altho there has been no judicial decision against the constitutional right of the Legislature to create city planning commissions some doubt has been cast upon the constitutionality of such legislation and this has had the effect of causing some of the commissions now in existence to hesitate to assume the duties conferred upon them and it has probably had some effect in discouraging the appropriation of funds for the work of such commissions.

It may also be that some of the governmental units, such as counties, townships and boroughs, are not in a position to create or finance the kind of an organization necessary to effectively and successfully carry on the work of planning in advance for the development of public improvements.

In view of these facts it seems highly desirable that the constitution should provide for such commissions and that there should be some competent authority charged with the responsibilities and duties of preparing comprehensive plans for the development of transportation, park and recreational facilities and other public improvements for considerable areas which might include a number of governmental units of different classes.

Article 3, Section 20, of the present Constitution prohibits the creation of special commissions, but the objects desired might best be accomplished by permitting the appointment of commissions which would exercise jurisdiction over considerable areas and the following extension of said section is suggested:

> Except that commissions to be known as City Planning Commissions or Regional Planning Commissions may be created, the boundaries of their jurisdiction established, their expenses provided for, and their powers and duties prescribed, to secure coordinated comprehensive plans of highways and roads, parks and parkways, and all other means of intercommunication, land subdivision, water supply, sewage and sewage disposal, collection and disposal of garbage, housing, sanitation and health, playgrounds, civic centers, and other public improvements, where the exercise of such powers and duties is not otherwise provided for by law.

We understand that consideration of Article 3 of the Constitution, which covers the subject of legislation, has not been assigned to your Committee but we feel that your attention should be called to this subject as it has a very important bearing upon the development of cities, boroughs and other governmental units of the State.

The question of excess condemnation and resale of property taken in connection with the making of public improvements has received much consideration in recent years and it is believed by many au-

thorities responsible for the carrying out of large improvements involving the taking of property that such action would be greatly assisted and the ultimate public benefits increased if more property than was actually required for the improvement could be taken, within reasonable limitations, and the portion not actually used to be resold or leased with such restrictions as would assure the greatest benefit to the public in the use and enjoyment of the improvements.

The right of excess condemnation and resale has been provided for by constitutional amendments in several states and a resolution with this object in view was passed by the Legislature of Pennsylvania in 1915, but failed to pass at the Session of 1917.

The resolution had been carefully drawn by competent legal authority and provided for, adding the following section to Article 9 of the Constitution:

> "The State or any municipality thereof acquiring or appropriating property or rights over or in property for public use, may, in furtherance of its plans for the acquisition and public use of such property or rights and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for public use, and may thereafter sell or lease such excess and impose on the property to be sold or leased any restrictions appropriate to preserve or enchance the benefit to the public of the property actually occupied or used."

This amendment would probably accomplish the object desired, but the authority should perhaps be broader than provided therein and the following form is suggested as a substitute as its intent would be to permit the acquisition and sale under proper regulations of more property than might be actually required for some improvement in which both a municipality and a private corporation might be interested:

> The State or any municipality thereof may acquire or appropriate property or rights over or in property for public or corporate use and may in furtheance of its plans for the acquisition and use of such property or rights, and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for such public or corporate use and may thereafter sell or lease such excess and impose on the property so sold or leased any restrictions appropriate to preserve or enchance the benefit to the public of property actually occupied or used.

The problem of paying the cost of public improvements, particularly with respect to those which involve the acquisition of property for public uses, has become a difficult one and many needed improvements are delayed, prevented or greatly increased in cost thru the lack of ability of the municipality to finance them under existing laws. To provide larger facilities for financing such improvements many states have authorized the laying of special assessments against property benefited by the improvement whether the property is directly touched by the improvement or not. The Constitution of Pennsylvania has been interpreted by the courts as prohibiting the assessing of benefits for public improvements against property not actually touched by such improvement. As a matter of fact properties not directly touched by a public improvement are often greatly enhanced in value by such improvement and it would therefore seem equitable that they should be charged with a portion of the cost commensurate with the benefits received. A resolution proposing an amendment to Article 9 of the Constitution was introduced in the General Assembly of 1915 but failed to receive approval at that time. This amendment was as follows and its purpose might now be accomplished by adding it as a new section to Article 9:

"The General Assembly may authorize assessments against all properties, whether abutting or not, which are actually benefited by the construction, enlargement, laying out, widening, grading or other improvement of public highways, parks, buildings or other public works by the State or any municipality thereof."

This authorization would be rather broad in its intent and it might be wise to restrict the improvements to which it could be applied to the laying out, opening and widening of public highways and the taking of property for parks, playgrounds and other public purposes.

We have not attempted to set forth at any length the arguments in support of these suggested measures. The benefits and advantages accruing from Excess Condemnation are very thoroughly discussed in a "Report prepared by the Chicago Bureau of Public Efficiency," September, 1918, and in "A Report of the Committee on Taxation of the City of New York," 1915. The Assessment of Benefits is discussed at some length in the Annual Report of the Bureau of Surveys of the City of Philadelphia for the year 1916. Copies of these reports are on file in this Bureau and additional copies can undoubtedly be obtained for the use of your Committee if you desire them.

We trust that these suggestions may be of service to your Committee and it will afford us very much pleasure to further cooperate with you in any way we can.

Yours very truly,

Chief, Division of City Planning and Municipal Engineering, Bureau of Municipalities.

Copies to John P. Connelly.
Mrs. Barclay H. Warburton.
William Perrine.
Charles H. English.

EXHIBIT "C"

The following data relating to Bonded Indebtedness, Notes owing and Sinking Fund has been collected by a personal survey of 201 of the 940 boroughs of the Commonwealth.

Total of original Bond Issues,		$12,653,365
Purpose for which issued—		
Floating Debt,	$2,055,937	
To refund former issues,	1,542,775	
Improvements,	9,054,653	
		12,653,365
Amount we question as legitimate issues—		
Floating Debt,	$2,055,937	
Refund of former issues,	1,542,775	
		$3,598,712
Notes Owing,		$1,080,278

*Note (Of these 201 boroughs 103 have borrowed money on unsecured notes).

SINKING FUND.

Amount which should be in Sinking Fund,	$2,095,025 53
Actual cash in Sinking Fund,	549,223
Deficiency in Sinking Fund,	$1,545,802 53
Notes owing,	1,080,278
Net deficiency,	$2,626,080 53

*Note (Of these 201 boroughs 69 have no moneys in Sinking Fund).

Bond issues in those boroughs,	$5,412,815
Amount due Sinking Fund,	840,535

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 7

STATE BUDGET SYSTEM—RECOMMENDATIONS OF NEW YORK STATE RECONSTRUCTION COMMISSION.

Harrisburg, Pa., December 26, 1919.

Hon. George E. Alter,

Acting Chairman, Committee No. 1.

Dear Sir:—I understand your Committee desires a memorandum on Recommendations of the New York State Reconstruction Commission in Respect to an Executive State Budget System.

(A) *Synopsis of the Recommendations of the Commission:*

The New York State Reconstruction Commission in its Report of October 10, 1919 (a copy of this Report is in the Secretary's office), makes (page 317) the following synopsis of its recommendations:

> "1. The Governor will be made responsible for securing estimates of proposed expenditures from responsible officers of all State spending agencies; also estimates of all anticipated revenues of the State for the period to be financed. The incoming Governor of New York assumes the duties of his office on January first which is usually two or three days before the beginning of the legislative session. If the budget program has just been prepared by the outgoing Governor and submitted to the Legislature, the new Governor cannot be held responsible for it. Estimates may be gathered and compiled under the supervision of the old administration, but the new

administration will have the power to make up the budget and present it to the Legislature. The new Goevrnor will make up the budget after he has appointed his departmental heads and can call them into conference to determine their relative needs in the financial program for the coming year.

"2. The Governor will be required to review all estimates of expenditures and with the aid and counsel of his administrative colleagues to prepare a complete plan of proposed expenditures in which the relative importance of all demands on the treasury are considered.

"3. The Governor will have a permanent staff agency to assist him in the collection of Budget data and the preparation of the Budget. Under the proposed plan of organization the Bureau of Administration in the Executive Department will be charged with the duty of gathering the estimates and other information relative to the Budget and of making a complete compilation of all Budget data for the use of the Governor.

"4. The Governor will be required to hold public hearings on a tentative Budget before its presentation to the Legislature.

"5. The Governor will be required to present to the Legislature early in the session a complete plan or budget embracing all the proposed expenditures shown in connection with the anticipated revenues of the State; also a statement of the condition of the Treasury both at the beginning and at the end of the period covered by the Budget, and a program of revenue measures. If found necessary in financing expenditures for public works, to raise part of the moneys required by the issuance of bonds, then the Budget will contain an estimate of such proposed expenditures with a statement of the amount to be raised by bond issues. Full details will be

given as to the requirements to be attached to the issuance of the bonds.

"6. The Legislature will be required to begin immediately and openly to consider the Governor's Budget.

"7. The Governor will have the right, and it shall be his duty to meet with the committee of the Legislature as a whole to explain, discuss and define his financial proposals.

"8. The Legislature will not be permitted to pass any appropriation bill except upon recommendation by the Governor, until the Governor's entire plan is acted upon.

"9. The Legislature will not be permitted to add to the Governor's proposed Budget, but only to reduce and strike out items therein.

"10. The Legislature will be allowed to provide for expenditures in addition to those contained in the Governor's Budget only by special procedure and subject as at present to the Governor's veto.

"11. The Governor will be given authority to supervise the expenditure of all appropriations and will be required to report transfers and changes in the schedules or allotments of appropriations to the Legislature. In order that the Governor and his department heads may have reasonable latitude in making expenditures, the appropriation or budget bill will not be rigidly itemized. One of two plans will be adopted. The first plan contemplates that the appropriation for each main class of expenditures in an organization unit will be made in lump sum with a supporting schedule for each lump sum. This schedule will serve as a guide to expenditures rather than a rigid program, transfers being permitted within a schedule by application to and approval by the Governor. Under the second plan a lump sum appropriation will be made by the Legislature to each main class of expenditure in an

organization unit, and control over the expenditure will be secured by requiring each unit to allocate its lump sum appropriation with the approval of the Governor just prior to the beginning of the fiscal year for which the appropriation is made.

(B) *Text of Constitutional Amendments Recommended.*

The complete text of the Constitutional amendments drafted and recommended by the New York State Reconstruction Commission is as follows:

21. No money shall ever be paid out of the treasury of this State or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; all appropriations or balances of appropriations remaining unexpended or unencumbered at the end of the fiscal year for which they are made, shall revert to the state treasury; except that appropriations for the purchase of land, or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made.

22. All money shall be appropriated in accordance with the provisions which follow.

By November fifteenth, annually, all departments and agencies, including the Judiciary and the Legislature, asking appropriations from the State, shall submit to the Governor, upon blanks furnished by him, estimates of their financial needs for the next ensuing fiscal year. At the time of receiving such estimates, the Governor shall secure estimates of all anticipated revenues of the state for the fiscal year next ensuing. The Governor's budget staff shall receive such estimates, and prepare and make available to the public a tentative budget thereof. The Governor shall then provide for

public hearings on such tentative budget and thereafter shall, in his discretion, revise all estimates of expenditures before their inclusion in the budget.

By February first next succeeding the Governor shall present the budget to the Legislature. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year next ensuing. The proposed expenditures shall be fully itemized. The budget shall show in comparison with each item of the proposed expenditures, the amount appropriated and the amount actually expended for the last preceding fiscal year, also the amount appropriated for the current fiscal year. The budget shall include (1) a current balance sheet; (2) a statement of debts and sinking funds; (3) an estimate of the State's financial condition as of the beginning and end of the fiscal year covered by the budget; (4) a statement of any taxation measures which the Governor may propose for increasing the state's revenue; and (5) a statement of any proposed bond issue, giving the amount, term and purpose of such bonds and the requirements to be attached to their issuance.

The Governor shall, at the time of presenting the budget to the Legislature, submit a bill containing the proposed appropriations for the fiscal year covered by said budget. The presiding officer of each house shall forthwith introduce the same therein. The Governor may, with the consent of and before final action by the Legislature, amend or supplement such bill. Immediately after the introduction of the budget bill the standing committee of both houses in charge of appropriation measures shall begin to consider it, and shall sit jointly in open sessions while so doing. At any time during the consideration of the budget bill the Governor shall have the right, and it shall be his duty when requested by the

Legislature, to appear before the Legislature or any Committee thereof, and to be heard or to answer questions in respect thereto. The Legislature shall not alter or amend the budget bill except by striking out or reducing items thereof.

Neither house of the Legislature shall make other appropriations, except emergency appropriations as hereinbefore provided, until the budget bill shall have been finally acted upon by both houses; and no such other appropriation shall be valid except it be embodied in a separate "supplementary appropriation bill" for a single object therein stated and shall provide the revenue necessary for the appropriation thereby made by a tax, to be laid and collected as shall be directed in such bill, unless it appears from the budget that there is sufficient revenue available therefor.

In case of an emergency the Governor shall present to the Legislature an appropriation bill or bills, providing for the expenditures needed to meet such emergency, and shall recommend the immediate passage of the same. Any such bill shall be known as an "Emergency Appropriation Bill." The Legislature may amend any emergency appropriation bill by increasing or decreasing the items contained therein, subject to the approval of the Governor, as provided in Section nine of Article four of the Constitution.

The Governor shall have the power to require all departments and agencies receiving money from the state to install and keep such books and records as he may deem necessary to supply full and accurate information relative to their operation and financial management.

(C) *Short Statement of Recommendations of Commission compared with Provisions in other States:*

First: *That no money shall be paid out of the treasury except upon appropriations made by law.*

This is the provision of Article three, Section 16 of the present Constitution of Pennsylvania. Indeed the adoption of an executive State Budget System would appear to involve the striking out of Section 15 of Article three, and placing of all provisions respecting the appropriations and the paying out of public money under one section, or a series of sections beginning with Section 16, Article three.

Second: *That appropriations unexpended or unencumbered at the end of the fiscal period for which they are made shall revert to the state treasury; except that appropriations for the purchase of land, or the erection of buildings or new construction shall continue in force until the attainment of the object for which such appropriations are made.*

Limitations on time of payment or on the life of the appropriating Act are found in the constitutions of 12 states. See Index Digest to State Constitutions, p. 39.

Third: *That by a stated date all agencies asking appropriations from the state shall submit to the Governor estimates of their financial needs.*

This is required by the constitutions of Maryland, Massachusetts and West Virginia (to the Board of Public Works, of which the Governor is a member), by a pending constitutional amendment of Indiana, and by statute in sixteen other states. Furthermore, the statutes of eleven other states require the submission of estimates to bodies of which the Governor is a member, and the statutes of three additional states require the submission of estimates to bodies entirely appointed by the Governor.

Fourth: That the Governor shall cause to be compiled these estimates of financial needs, and shall make such compilation available to the public and hold public hearings on such estimates.

This is required by the Constitutions of Maryland and West Virginia (Board of Public Works, of which the Governor is a member), by the pending constitutional amendment of Indiana, and by statute in a number of states.

Fifth: *That by a stated date the Governor shall submit a budget to the Legislature containing a complete plan of proposed expenditures.*

The Commission in this connection recommends that the Constitution shall prescribe in detail the form and content of the budget as follows:

(1) in comparison with each item of the proposed expenditures, the amount appropriated and the amount actually expended for the last preceding fiscal year, also the amount appropriated for the current fiscal year;

(2) a current balance sheet;

(3) a statement of debts and sinking funds;

(4) an estimate of the state's financial condition as of the beginning and end of the fiscal year covered by the budget;

(5) a statement of any taxation measures which the Governor may propose for increasing the state's revenues; and

(6) a statement of any proposed bond issue, giving the amount, term and purpose of such bonds and the requirements to be attached to their issuance.

The constitutions of Maryland and West Virginia, and a pending constitutional amendment in Indiana require the submission of a budget in substantially the form and detail recommended by the New York Reconstruction Commission. The constitution of Massachu-

setts, while requiring the Governor to submit a budget, does not go into as much detail. Its provisions are:

> "Within three weeks after the convening of the general court the Governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the general court may by law prescribe, or, in default thereof, as the Governor shall determine."

Nineteen other states require by statute the Governor to submit a budget.

Sixth: *That at the time of presenting the budget to the Legislature the Governor shall submit a bill containing the proposed appropriations for the fiscal period covered by said budget. The presiding officer of each house shall forthwith introduce the same therein. The Governor may, with the consent of and before final action of the Legislature, amend or supplement such bill. Immediately after the introduction of the budget bill the standing committees of both houses in charge of appropriation measures shall begin to consider it, and shall sit jointly in open sessions while so doing. At any time during the consideration of the budget bill the Governor shall have the right, and it shall be his duty when requested by the Legislature or any committee thereof to be heard or to answer questions in respect thereto. The Legislature shall not alter or amend the budget bill except by striking out or by reducing items thereof.*

The constitutions of Maryland and West Virginia and a pending constitutional amendment of Indiana require an appropriation bill to be submitted by the Governor. In Massachusetts the Governor is not required by the constitution to submit an appropriation bill,

but there is an express requirement that "all appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill."

In the constitutions of Maryland and West Virginia the legislature is prohibited from increasing an item in the budget, except for the legislature or the judiciary. In Massachusetts the constitution permits the legislature to increase or decrease items, and to add new items or omit items.

Seventh: *That neither house of the Legislature shall make other appropriations, except emergency appropriations as hereinafter provided, until the budget bill shall have been finally acted upon by both houses; and no such other appropriation shall be valid except it be embodied in a separate supplementary appropriation bill for a single object therein stated and shall provide the revenue necessary for the appropriation thereby made by a tax, to be laid and collected as shall be directed in such bill, unless it appears from the budget that there is sufficient revenue available therefor.*

The constitutions of Maryland and West Virginia, and a pending amendment to the constitution of Indiana, prohibit the legislature from making any appropriations until both houses of the legislature shall have finally acted upon the general appropriation bill, with the one exception that in case of actual or threatened invasion of their respective states appropriations may be made for the payment of its obligations. The constitution of Massachusetts provides that "before final action on the general appropriation bill it (the legislature) shall not enact any other appropriation bill except on the recommendation of the Governor."

With respect to supplementary appropriations, the constitutions of Maryland and West Virginia, and a pending constitutional amendment of Indiana, contain provisions practically identical with those

recommended by the New York Commission. The constitution of Massachusetts provides that every appropriation bill other than the one based on the Governor's budget "shall provide the specific means for defraying the appropriations therein contained."

Eighth: *That in case of an emergency the Governor shall present to the Legislature an appropriation bill or bills, providing for the expenditures needed to meet such emergency, and shall recommend the immediate passage of the same. Any such bill shall be known as an "emergency appropriation bill." The Legislature may amend any emergency appropriation bill by increasing or decreasing the item contained therein subject to the approval of the Governor.*

Such an emergency appropriation can be made in Massachusetts on the recommendation of the Governor, but apparently not in Maryland or West Virginia, except to repel actual or threatened invasion.

Ninth: *That the Governor shall have the power to require all departments and agencies receiving money from the state to instal and keep such books and records as he may deem necessary to supply full and accurate information relative to their operation and financial management.*

There are apparently no exactly similar provisions in the constitution of any state. There are a few states, as Connecticut, Michigan, Oklahoma, which prescribe or make provision for systems of accounting.

If the Governor is to be required to submit a budget the New York Commission contends that he must be put in a position to secure from any officer or department or other agency desiring an appropriation such information in regard to their financial operations and condition as he may desire.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 8

STATE BUDGET SYSTEM—CONSTITUTIONAL PROVISIONS IN MASSCACHUSETTS.

Harrisburg, December 27, 1919.

Hon. George E. Alter,

Acting Chairman, Committee No. 1,

Dear Sir: I understand your Committee want a memorandum on Massachusetts Constitutional Provisions in Respect to Executive State Budget System.

The Constitutional Budgetary provisions of Massachusetts were adopted by vote of the people November 5, 1918. They were Article of Amendment No. 16 of the Massachusetts Constitutional Convention of 1917-1919. The provisions are as follows:

> Section 1. *Collection of Revenue.* All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof.
>
> Section 2. *The Budget.* Within three weeks after the convening of the general court the Governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form

as the general court may by law prescribe, or, in default thereof, as the Governor shall determine. For the purpose of preparing his budget, the Governor shall have the power to require any board, commission, officer or department to furnish him with any information which he may deem necessary.

Section 3. *The General Appropriation Bill.* All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The general court may increase, decrease, add or omit items in the budget. The general court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the Governor. The Governor may at any time recommend to the general court supplementary budgets which shall be subject to the same procedure as the original budget.

Section 4. *Special Appropriation Bills.* After final action on the general appropriation bill on recommendation of the Governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

Section 5. *Submission to the Governor.* The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become a law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days

after the bill shall have been presented to him, such items shall have the force of law unless the general court by adjournment shall prevent such transmission, in which case they shall not be law.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 9

COURTS—REORGANIZATION RECOMMENDED BY AMERICAN JUDICATURE SOCIETY.

Harrisburg, Dec. 26, 1919.

Hon. Hampton L. Carson,

Chairman Committee No. 2.

Dear Sir: I understand that you desire a memorandum on Recommendations of the American Judicature Society with respect to the Organization of State Courts.

The American Judicature Society was organized in 1913 "to promote the efficient administration of justice." Its Board of Directors is composed of the following lawyers:

Harry Olson, Chairman.
Chief Justice of the Municipal Court of Chicago.

Woodbridge N. Ferris,
Ex-Governor of Michigan.

James Parker Hall,
Dean of the University of Chicago Law School.

Edward W. Hinton,
Professor of Law in the University of Chicago Law School.

Frederick Bruce Johnstone,
Of the Chicago Bar.

Albert M. Kales,
Of the Chicago Bar.

Frederick W. Lehmann,
Of the St. Louis Bar; former President of the American Bar Association; former Solicitor General of the United States.

Nathan William MacChesney,
Of the Chicago Bar; President of the Illinois Commission on Uniform State Laws.

Robert W. Millar,
Professor of Law, North Western University School of Law.

Roscoe Pound,
Dean of Harvard University Law School.

Horace K. Tenney,
Of the Chicago Bar.

John H. Wigmore,
Dean of the Northwestern University School of Law.

John B. Winslow,
Chief Justice of the Wisconsin Supreme Court.

Herbert Harley,
Secretary.

The Council of the Society embraces over 300 well-known men from all parts of the United States, among whom are many lawyers. To the members of this Council the publications of the Society are sent and from them criticisms are received.

The work of the Society has consisted in presenting to the public and more especially to lawyers carefully considered suggestions in regard to the organization of Courts, the dispatch of judicial business and the selection of judges. These suggestions were finally embodied by the directors in legislative form, and the drafts of Acts so written were printed and given a wide circulation. As a result of the consequent criticisms and of further study and reflection revised drafts were written by the directors and again circulated. It is to the proposals of these revised drafts that I direct your attention in answer to your request for a memorandum.

The recommendations of the American Judicature Society deal with three matters:

(1) The Organization of Courts.

(2) The Dispatch of Judicial Business.

(3) The Selection of Judges.

1. The Organization of Courts.

The Society recommends the abolition of all courts not of record and the union of all the courts of a state into a single court which they have called for convenience the General Court of Judicature.

This General Court is divided into the "Court of Appeals," which corresponds to our Supreme and Superior Courts, the "Superior Court" which is to discharge, broadly speaking, the duties of our Courts of Common Pleas, and the "County Courts" which are to handle the smaller local business.

The Court of Appeals is to consist of several branches, preferably of three members each, and each of these branches will in the ordinary case dispose finally of such appeals from the lower courts as shall be assigned to it. This, the Society argue, will ensure real consideration of each case by each justice who joins in deciding it, and will eliminate the risk of falling permanently into a system under which the average case is carefully considered only by that member of the Supreme Court to whom it is assigned.

The inner circle of the Court of Appeals is called the Supreme Court Division of the Court of Appeals, and corresponds closely to our Supreme Court. Appeals in certain cases would lie to this division from the other divisions or direct from the lower courts as might be prescribed by rules. The duty of construing the Constitution would undoubtedly rest upon this Supreme Court Division.

Next to the Court of Appeals comes the Superior Court, which is separated into a number of territorial divisions; for a large state five divisions are suggested. This is the court of original jurisdiction in the more important cases and of intermediate appellate jurisdiction in certain cases. The judges of the Superior Court are to be assisted by salaried masters who perform whatever judicial duties may be assigned to them by general rule, and especially the ex parte business of the court and the decision of questions of pleading.

The lowest court is the County Court, with jurisdiction in criminal cases except those involving very serious crimes, in civil suits involving not more than $500, and in all civil suits by agreement of the parties. The County judge or judges are ex officio masters of the Superior Court. They in turn are assisted by district magistrates who need not be lawyers, who correspond to our justices of the peace but differ from them in that they are directly accountable to the courts and removable by them.

In large cities, such as Philadelphia and Pittsburgh, there is provided a Metropolitan Court to take the place of both the Superior and County Courts. A Chief Justice presides over this Metropolitan Court and sees that judges are properly assigned to various divisions, such as Chancery, criminal, probate, civil, jury trials and domestic relations.

The head of all the courts is the Chief Justice of the State, to whom large administrative and appointive powers are given. He must assign members of the Appellate Court to their respective divisions, and may assign judges of the Superior Court to temporary service in the Appellate Court. He must preside at periodic meetings of all the judges of the state and must collect such information, issue such orders and make such suggestions for legislation as will result in the proper administration of justice. In a word, he is the conspicuous figure who is personally responsible for the gerenal success or failure of the State's judicial system.

The Chief Justice is assisted in administrative work by the Judicial Council, which consists of the Chief Justice and a small number of the more experienced judges.

Each division of the Superior Court has its presiding justice and the Chief Justice or his appointee acts as presiding justice of all the county courts.

2. The Despatch of Judicial Business.

The regulation of procedure and practice is left entirely with the Judicial Council. Rules issued by them, after due notice, cover all matters of this kind now covered either by statute or by rules of court. The Judicial Council also regulates the duties of all court officers and the costs of all judicial proceedings.

In large cities where there is a Metropolitan Court, scope is allowed for the adoption by that court of rules peculiarly suited to the needs of the locality.

3. The Selection of Judges.

The American Judicature Society deprecates any change in the selection of judges where the present system is satisfactory. Subject to this qualification they recommend that judges, masters and district magistrates be selected as follows (with due protection of the positions and salaries of present judges):

(a) The Chief Justice, by a popular election for a term of four or six years.

(b) The justices of the Court of Appeals by appointment of the Chief Justice from among the judges of the Superior Court.

(c) The judges of the Superior Court by appointment of the Chief Justice from among active practitioners or judicial officers.

(d) County judges, by election.

(e) Masters, by appointment of the Chief Justice and the presiding Justice of the divisions to which they are to be attached.

(f) District magistrates, by appointment of the County Commissioners with the approval of the County Judge.

3a. The Retirement of Judges.

The Society does not recommend the system of recall by popular election, nor do they recommend the system of periodic competitive elections now in existence in Pennsylvania. They suggest a third course, calculated to give the voters periodic opportunities to register approval or disapproval of a judge without confusing the issue by the presentation of the name of a rival candidate.

At the end of his first three years of service every judge of the Court of Appeals or of the Superior Court comes before the voters at an election in which the only question is, "Shall Judge X be continued in office?" If the voters answer this question in the negative, a vacancy is created which will be filled by appointment of the Chief Justice. If the answer is in the affirmative the judge continues in office for a further period of six years, when he submits to a similar election. If he is again continued in office it is for a further period of nine years, at the end of which time if a third and last election favors him, he becomes a judge for life subject to good behavior. The same system is applied to County Judges, with slightly different terms between elections.

In the opinion of the Society such a method of selecting and retiring judges will focus the attention of the voters upon a man's judicial record and character and will tend toward the desirable practise of retiring the sitting judges in office.

There are also provided as methods for retiring judges, impeachment, removal by two-thirds vote of the General Assembly for cause and after opportunity for defense, and removal by the Judicial Council in like manner.

A more detailed statement of the suggestions of the American Judicature Society may be obtained from the Society's publications and particularly from Bulletin VII A, "Second Draft of a State-wide Judicature Act," and Bulletins IV A and IV B dealing with Metro-

politan Courts. These publications are on file in the Secretary's office.

The establishment in Pennsylvania of a judicial system substantially as recommended by the American Judicature Society could be made possible by the following constitutional provisions:

1. Elimination in the Constitution of all reference to specific courts, except the Supreme Court, leaving the General Assembly free to create and change inferior courts at will.
2. The establishment of the Chief Justice as a constitutional officer, with large appointive and administrative powers.
3. Vesting all power to regulate practice and procedure in the Courts or in certain judicial officers.
4. The retention of all present inferior courts until altered or changed by the General Assembly.
5. The protection of judges from unfair change in duties and from loss of salary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 10

BUDGET SYSTEM—RECOMMENDATIONS OF NEW YORK 1915 CONVENTION.

Harrisburg, Pa., January 3, 1920.

Hon. Wm. I. Schaffer,

Chairman of Committee No. 2.

Dear Sir. On November 18th, (See Proceedings, page 108), Mr. Pinchot said: "May I ask that the Secretary furnish the Members of the Committee with this Section (Relating to the Responsibility of the Governor in respect to the Budget), or, if practical, the complete document of the New York Constitution."

I understand from Mr. Pinchot that the information desired is all matter in the Constitution of the State of New York proposed by the Constitutional Convention of 1915, in relation to (1) an executive state budget system, and (2) any other provisions in reference to the responsibility of the governor to the people or to the legislature not found in the present constitution of Pennsylvania.

I have been unable to find any provisions in the Constitution proposed by the New York Convention of 1915, dealing with the responsibility of the governor either to the people or to the Legislature, not found in the present constitution of Pennsylvania. I, therefore confine this memorandum to

The Executive State Budget System Found in The Constitution Proposed By the 1915 New York Constitutional Convention.

With respect to the main features of this system I refer you to Memoranda and Briefs No. 7, in which the proposals of the New York State Reconstruction Commission of 1919 are set forth. These proposals substantially resemble those of the 1915 Convention. The 1915 plan however differs from that of 1919 in certain respects:

(1) It does not provide for a permanent staff agency to assist the governor in collecting data and preparing budgets.

(2) It does not permit the governor to revise estimates submitted to him for legislative or judicial needs.

(3) It requires the governor to appear before the legislature only if that body demands his appearance.

(4) It permits appropriation items included in the governor's bill to be increased by the legislature if they are items for the legislature or judiciary.

(5) It does not give the governor the control of expenditures and the latitude in shifting the appropriations from item to item which are given by the 1919 plan.

Yours very truly,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 11

COURTS—ORGANIZATION OF THE INTERMEDIATE APPELLATE COURTS OF NEW YORK STATE.

Harrisburg, Pa., January 3, 1920.

Hon. Hampton L. Carson,

Chairman of Committee No. 2.

Dear Sir: I understand that you desire a memorandum on The Intermediate Appellate Courts of New York State.

The state of New York is divided into four judicial departments, in each of which there sits an appellate court called the Appellate Division of the Supreme Court. The Appellate Division of the first department, which includes New York City, has seven judges, while the other divisions have five judges each. These judges and the presiding justices of each division are appointed for a term of five years by the Governor from among those elected to the Supreme Court, which is the State-wide court of first instance. A majority of the justices of each division are required to live in the judicial department to which that division is assigned.

In each judicial department appeals lie from final judgments of the Supreme Court to the Appellate Division of that department. The work of the Appellate Division is entirely appellate, except that a Division may hear motions in the first instance and except also that

the judges may sit at nisi prius in departments other than their own. Appeals may be transferred from one division to another if pressure of business requires.

From the four Appellative Division appeals lie to the Court of Appeals, which is the Court of last resort. Appeals are of right.

(1) In capital cases.

(2) From final judgments of an Appellate Division.

(3) From orders granting a new trial in civil cases provided that the appellant stipulates that upon affirmance, final judgment shall be entered against him.

Appeals to the Court of Appeals may also be allowed by the Appellate Division.

The jurisdiction of the Appellate Divisions may be extended but not curtailed by the Legislature; while the jurisdiction of the Court of Appeals may be limited if the amount of property involved is not made the criterion of limitation.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDUM and BRIEFS No. 12

COURTS—ORGANIZATION AND OPERATION OF COURT OF COMMON PLEAS OF ALLEGHENY COUNTY.

Harrisburg, Pa., Jan. 3, 1920.

Hon. Hampton L. Carson,

Chairman, Committee No. 2.

Dear Sir: I understand you desire a Memorandum on:

The Organization and Operation of the Court of Common Pleas of Allegheny County under the Constitutional Amendment of November 7th, 1911.

There are fourteen Common Pleas Judges, one of whom is commissioned as President Judge. At the beginning of each year the Judges adopt a schedule assigning the various members to their respective duties during the ensuing year. This schedule in a general way provides a monthly arrangement and assigns each month one Judge to the Common Pleas Assignment Room, four or five to Criminal Court, and from five to seven to the trial of jury cases in Common Pleas. Jury trials are held continuously through the year except for three months in the summer and except for the time set apart for equity trials and new trial arguments. One Judge is always present in the Assignment Room for the disposition of motions, etc., the selection of juries and the assigning of cases to the various courts for trial. Equity trials are held three times a year, each equity trial list consuming one week's time.

The general argument list is heard once a month beginning on the first Monday thereof, the court in banc for that purpose being generally two and sometimes three judges assigned to that task. If the list is unusually long it is divided into two and heard at the same time by two separate sets of Judges. New trial arguments are heard every six or eight weeks, the Court in banc for that purpose consisting of the trial judge and two other judges.

Cases are placed on the list and distributed for trial as follows:

Five hundred cases are taken in their order from the issue docket and placed upon a printed trial list. Every Friday afternoon this list is called by the Judge then sitting in the Assignment Room and a list of cases is then set down for trial during the following week together with those cases, which are still undisposed of on the preceding week's list. This printed list is called on ensuing Fridays until the same has been gone through three times. On the third call a case must either be set down for trial, continued or placed by consent of counsel or for cause shown on what is called the deferred list. Cases on the deferred list must be called up for trial within three months or they are automatically continued. These cases may be put on the list for trial by filing a written stipulation of counsel with the Clerk. From the weekly list of cases, the clerk each day makes out a list which constitutes the daily list for the next day. The cases on this daily list are called for trial in the assignment room where the juries are selected and from there the case is assigned to the first unoccupied court room for trial."

Yours very truly,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 13

CHARITABLE INSTITUTIONS—APPROPRIATIONS TO.

Harrisburg, Pa., Jan. 6, 1920.

Mrs. John O. Miller, Commissioner,

Dear Madam:

I understand you desire a Memorandum on The States Appropriations to Institutions Not Owned and Controlled by the Commonwealth or Any Political Sub-Division Thereof and More Especially Answers to Two Questions.

First Question.

To what extent do the State's appropriations to institutions not owned and controlled by the State conform to the recommendations of the State Board of Public Charities?

In 1915, out of 269 institutions receiving appropriations

61, or 22;6% received the identical amounts recommended by the Board.

17, or 6.9% received more than the amount recommended by the Board.

184, 68.3% received less.

In addition 7, or 2.6% received appropriations although they were not institutions to which the Board had recommended an appropriation,

while 15, for whom the Board had recommended appropriations, failed to receive them.

That is to say, out of a possible 284 appropriations, about one-fifth conformed to the recommendations of the Board.

In 1917, out of 282 institutions receiving appropriations,

88, or 31.1% received appropriations identical with those recommended by the Board.

41, or 14.6% received more than the Board recommended.

146, or 51.7% received less.

In addition 7, or 2.4% received appropriations although they were not institutions to which the Board had recommended an appropriation.

That is to say, 194 institutions, or 68.7% received amounts different from those recommended and only a little less than one-third conformed to the recommendations.

In 1919, there were fewer discrepancies, owing to a very positive announcement by the Governor that he desired the appropriations to conform to recommendations.

Out of 297 appropriations,

140, or 47.1% received identical amounts with those recommended by the Board.

47, or 15.8% received more.

97, or 32.6% received less.

In addition, 12, or 4% received appropriations despite the failure of the Board of recommend them, and

1 failed to receive an appropriation, despite recommendation.

1 other, which received an indefinite recommendation, received an appropriation.

From the above figures it would appear that in a half to two-thirds of all cases, the Board's recommendations are not exactly followed.

If we examine the action of the Legislature itself, disregarding the corrective action of the Governor, the discrepancies are still greater.

Thus in 1915, as the bills passed the Legislature, 35.1% of the institutions received less than the Board recommended; 20.6% received more and 34.4% received the same, while 6.4% received appropriations without the Board's recommendation, and 3.4% of the applicants were denied appropriations, despite the Board's recommendations.

In 1917, the Legislature granted to 80 institutions more than the Board recommended; granted to 103 others less, and to only 94, the same, while 10 others received appropriations despite the Board's recommendations to the contrary. That is, out of a possible 287 appropriations, the Legislature disregarded the Board's suggestions in more than 200 cases, and the variations are almost as often upward as downward.

In 1919, 60 appropriations were granted by the Legislature exceeding the amounts that the Board recommended; 93 less, 11 received appropriations without recommendation, and 132 received the same as the Board's recommendations.

The figures given are taken from the Reports of the Board of Public Charities, and the Pamphlet Laws.

Second Question.

To what extent are appropriations to charitable institutions not owned and controlled by the State proportional to the work done by those institutions?

To completely and satisfactorily answer this question it would be necessary to come to an agreement on all the factors which determine "the work done by Charitable Institutions." One of these factors on which figures are available is the cost of the service. The following figures relating to a few of the hospitals receiving State Aid in 1917

would appear to indicate that the amount of aid given bears little relation to the cost of the service performed.

Hospital	Appropriation per free hospital day—year 1917	Ratio of appropriation to total cost of free service (per cent.)
Allegheny General, Pittsburgh ..	$2.70	85
Barnes Mem., Susquehanna	3.65	101
Adrian, Punxsutawney	1.50	72
Allegheny Valley, Tarentum	2.20	100
Brownsville	3.15	100
Bradford	1.63	79
Carlisle	2.86	55
Corry	2.43	65
Eye and Ear, Pittsburgh	4.30	103
Wills Eye, Philadelphia	1.60	67
McKeesport	2.85	117
Mercy, Johnstown	1.10	49
Jefferson, Philadelphia	3.00	100
Lankenau, Philadelhpia	1.00	22
Kensington, Philadelphia	3.00	118
Passavant, Pittsburgh	1.65	36

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 14

COURTS—REGULATION OF PROCEDURE.

Harrisburg, Pa., January 6, 1920.

Hon. Hampton L. Carson,
Chairman Committee No. 2.

Dear Sir: I understand that your Committee desires a memorandum on

The Delgation to the Courts of the Power to Regulate the Methods to be Followed in Judicial Proceedings.

The General Assembly in Pennsylvania have always regulated the details of judicial procedure to a very large extent. The enforcement of these regulations and the control of such further details as have not been touched by the General Assembly have been left to be dealt with by rules of Court. Such rules have been declared valid provided they are fair and reasonable.

No effort has ever been made, so far as I am aware, to entrust the whole matter of procedure to the judiciary. The only Constitutional objection which could be urged against such a course is the provision of Art. II, Sec. 1, by which "the legislative power of this Commonwealth" is "vested in a General Assembly." The power to regulate forms of action, the nature of pleadings, the form and service of process, the procedure of trial, and the forms and methods to be pursued in entering judgment, taking appeals and issuing execution, is unquestionably a legislative power. The question

then arises whether this power can be lawfully delegated to the courts.

It has been recognized in Pennsylvania from very early times (Barry v. Randolph, 3 Binn. 277, 1810) that courts of record have an inherent right to make rules for the regulation of judicial business; and this power has been expressly confirmed in the various courts by acts of assembly which permit rules "not inconsistent with the constitution and laws of the Commonwealth." The right of Congress and of our General Assembly to delegate to the Supreme Courts of the United States and of Pennsylvania, respectively, the power to regulate procedure in equity has not been questioned. I see no reason why the same delegation of power is not proper with respect to all judicial proceedings.

The validity of rules of court has been sustained, in various jurisdictions, with respect to a large variety of procedural matters, including pleading, notice, security for costs, continuances, admissibility of evidence and stays of execution.

The power to regulate appears to be both legislative and judicial, although the legislative power can be exercised to the exclusion of the judicial. If the Legislature declines to exercise the power there is no reason why it should not be exercised by the Courts.

In my opinion the whole field of procedure could, under our Constitution, be lawfully left to the Courts for regulation. The following Constitutional provision would put the question beyond doubt:

The General Assembly may vest in any court or courts or judges the power to regulate partly or wholly the methods to be followed in judicial proceedings.

If it were desired to vest the power of regulation exclusively in the Courts the following provision would be appropriate:

Except as otherwise provided by this Constitution the power to regulate the methods to be followed in judicial proceedings shall be vested exclusively in the Supreme Court; but such power may

be vested in such other court or courts or in such judges as the General Assembly may prescribe.

If it were desired to vest the power of regulation in the courts except where the General Assembly should act in any particular matter, the following provision would be appropriate.

Except where the General Assembly shall exercise the power to regulate partly or wholly the methods to be followed in judicial proceedings, such power shall be vested in the Supreme Court; but such power may be vested in such other court or courts or in such judges as the General Assembly may prescribe.

If either of the last two provisions should be adopted, it would be necessary to provide in the schedule of the Constitution that existing statutes and rules of practice should continue in force until superseded.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 15

SUFFRAGE—RESTRICTIONS AS TO NEWLY NATURALIZED PERSONS.

Harrisburg, Pa., Jan. 6, 1920.

Mrs. John O. Miller,
Commissioner.

Dear Madam: I understand that you desire a memorandum on the subject of

The Imposition of Restrictions upon the Use of The Franchise by Newly Naturalized Persons.

Such a restriction would take the form of a requirement of residence, duration of citizenship, education or property qualification. For example, a naturalized citizen might be required to have lived ten years in the State before he could vote, or to have been a citizen for ten years, or to have a certain amount of education or of property.

Our Constitution now requires in Art. VIII, Section 1, that a voter "shall have been a citizen of the United States at least one month" before election. In Minnesota the period is three months, and in New York it is ninety days. I know of no other restrictions in State Constitutions which apply especially to the exercise of the franchise by foreign-born persons.

The question arises whether such restrictions are contrary to the 15th Amendment to the Constitution of the United States which provides: "The right of citizens of the United States to vote shall not

be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Since the 14th Amendment declares that all persons naturalized in the United States are citizens of the United States it follows that any attempt to discriminate in the matter of the franchise against a naturalized person on account of his race would offend the Constitution of the United States.

I have found no decided case which raises this precise question. In Minnesota (State ex rel. vs. Weber, 96 Minn. 422, 1915), the State Supreme Court decided that the three months' period of citizenship required by the Minnesota Constitution as a prerequisite to the right to vote does not offend the 14th Amendment to the United States Constitution which forbids the States to abridge the privileges or immunities of citizens of the United States. This decision was proper, since the right to vote is not a "privilege or immunity of citizens of the United States." But the question arising under the 15th Amendment does not appear to have been discussed in that case although it could have been raised.

In the Debates of the Pennsylvania Constitutional Convention of 1873 I can find no discussion as to the constitutionality of the one months' citizenship clause which the delegates then inserted in the Constitution. Probably the period was so short that the idea of a dispute as to the validity of the provision did not suggest itself. And for the same reason there appears to have been no attempt to litigate the question.

It is clear that to require a foreign-born citizen to submit to special suffrage restrictions would be to abridge his right to vote. Would his right be abridged "on account of race?" I believe that it would. At any rate, the question is so doubtful that I personally should not venture to recommend putting into the State Constitution a substantial restriction of this kind upon the assumption that its constitutionality would be sustained.

The 15th Amendment was of course intended to protect the negro; and so far as I am aware all the cases construing it have been cases involving the rights of negroes. But the language and reason of the Amendment apply equally to citizens of European birth. The word "race" of course may refer only to those racial divisions of mankind which are generally designated by their colors—white, black, brown and red. But there is no authority for adopting such an interpretation. I believe that the Supreme Court of the United States might very well say that "race" was equivalent to nationality and that a State can no more discriminate in the matter of the franchise against a citizen because he is foreign-born than it can discriminate against a colored man because he is African-born.

It it were desired to insert a provision of this kind in the Constitution, taking the risk that it would be declared contrary to the Constitution of the United States, it would only be necessary to strike out the words "one month" in Art. VIII, Sec. 1, and to substitute such length of time as seemed proper.

Very truly yours,

WM. DRAPER LEWIS.
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 16

CHARITABLE APPROPRIATIONS—AMOUNT OF, TO AND SERVICES RENDERED BY INSTITUTIONS NOT CONTROLLED BY STATE.

Harrisburg, Pa., Jan 12, 1920.

Hon. William I. Schaffer,
Chairman of Commission.

Dear Sir: I understand the Commission desires a Memorandum on The Service Rendered by Charitable Institutions not Controlled by the State, and the Amount of Such Appropriations, on Data Furnished by Mr. Bromley Wharton, Secretary of the State Board of Public Charities.

I transmitted the request of the Commission to Mr. Wharton and have received from him the following Letter and Enclosure.

Philadelphia, January 10, 1920.

William Draper Lewis, Esq.,
Secretary, Commission on Constitutional
Amendment and Revision,
Law School, University of Penna.,
34th & Chestnut Streets,
Philadelphia, Pa.

Dear Dean Lewis: I have your favor of the 8th instant, and I enclose a statement which will give you the information desired.

1. The total number of charitable institutions, not owned and controlled by the State, receiving State appropriations is—170 Hospitals, 5 Sanatoria, 120 Homes, Asylums, etc., a total of 295 institutions.

2. The total amount of money appropriated by the last Legislature (1919) to Hospitals, Sanatoria, Homes and Asylums (not controlled by the State) is $7,635,389.20.

3. As noted on the enclosed statement, the recommendations of the Board to the Legislature for appropriations to the Hospitals and Homes are based on the *free service rendered.*

   We also consider the question of apparent need, but the recommendation in each instance is based upon the *amount of money expended for free service.*

In addition to this during the year 1918, the Hospitals of the State treated 725,213 Dispensary patients.

In nearly all the hospitals, particularly those in the large cities, a Social-Service Department is maintained, and Social workers investigate and follow up the indigent cases admitted to the institution ascertaining whether or not the patient is deserving of free treatment.

As a check on the expenditure of this money the Auditor-General's office is a factor. For instance, the appropriation is paid by the State to a hospital in quarterly payments, provided, that after an examination of their books by the traveling auditor they show a need for this amount, otherwise, the amount of the actual deficit only is granted.

Since 1911, the Board of Public Charities has not made any recommendations for buildings or additions to buildings to any private, State aided hospital or home. Our recommendations, therefore, have been for *maintenance only.*

Our Harrisburg office will send you twenty-five (25) copies of our Statistical Book about which I spoke to you yesterday, to be delivered to you at Harrisburg.

Trusting this will give you the information you desire, I have the honor to remain, Sir

Respectfully fours,

(Signed BROMLEY WHARTON,

General Agent and Secretary.

APPROPRIATIONS FOR TWO YEARS BY THE LEGISLATURE OF 1919 TO INSTITUTIONS NOT COTROLLED BY THE STATE.

GENERAL HOSPITALS .....$ 170.00

Amount $6,277,900.00

(In this is included all teaching hospitals, special hospitals for cancer, children, eye, and ear, maternity, stomach and nervous diseases.)

In arriving at our recommendations to the Legislature, modus operandi is as follows: We have before us a sworn statement of the financial facts of the institution at the end of the State's fiscal year. This shows the income from all sources for maintenance, and the expenditures for the same. We analyze the reports carefully and note if there is any extravagance in the expense column. We then figure their hospital days, their cost per diem, and the number of *free hospital days*. We then multiply the *free hospital days* by the cost per diem, which will give the amount of money expended for *free* service. Our recommendations for State aid in no case ever exceed the amount of free service performed in any institution.

*Average cost per capita per diem in Institutions not controlled by the State—1918.	$	2.61
Number of Free Hospital Days for the year 1918		1,497,595.00
*Cost of Free Hospital Days for the year 1918	@ $2.61—	3,908,722.95
*Cost of Free Hospital Days for two years..	@ $2.61—	7,817,445.90
Amount appropriated by Legislature of 1919 for free hospital days for two years....		6,277,900.00

Amount Appropriated by Legislature of 1919 to *5 Sanatoria* not controlled by the State	$	155,200.00

Amount Appropriated by the Legislature of 1919 to *120 Homes, Asylums, etc.,* for the care of Aged, Children, Friendless, Cripples, Eppileptic, Blind	$	1,202,289.20

(Not Controlled By The State.)

*The $2.61 is used as an illustration. Each hospital is figured out on its own cost per capita separately.

I have directed that the copies of the "Statistical Book" referred to in Mr. Wharton's letter be distributed among the members of the Commission,

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 17

STATE DUTIES IMPOSED ON LOCAL EXECUTIVE OFFICERS.

Harrisburg, Pa., Jan. 12, 1920.

Mr. Francis Newton Thorpe,

Chairman of Committee No. 3.

Dear Sir: I understand that you desire a Memorandum on State Duties Imposed on Local Executive Officers.

The following is a list of State duties imposed by law on local executive public officers:

I. COUNTY OFFICERS NAMED IN THE CONSTITUTION.

1. *Sheriff.*

(a) He shall notify the Auditor General of the sale of property or franchise of corporations, limited partnerships and joint stock associations on writs of execution.

29 May 1901, sec. 1. P. L. 344 (4 P. 4581).*

(b) He shall remove inmates of the Western Pennsylvania Hospital when required so to do by the Chief Physician.

22 April 1863, sec. 8. P. L. 542 (2 P. 2377).

2. *Coroner.* None.

3. *Prothonotary.*

(a) He shall collect certain fees for the Commonwealth.

6 April 1830. P. L. 273 (4 P. 4595).

(b) He shall render an account annually in December to the Auditor General of State taxes collected by him.

6 April 1830, sec. 7. P. L. 273 (4 P. 4596).

5 April 1848, sec. 1. P. L. 335 (4 P. 4596.)

(c) Prothonotaries and Clerks of Criminal Courts shall make annual reports of the criminal business of their courts to the Secretary of the Commonwealth.

27 Feb. 1847, sec. 2. P. L. 173 (3 P. 3673.)

(d) He shall report to the State Treasurer judgments entered in favor of the Commonwealth.

30 March 1811, sec. 30. 5 Smith 235 (3 P. 3673.)

(e) He shall report each month to the Auditor General the names of corporations incorporated by the Courts of Common Pleas.

9 June 1911. P. L. 738 (6 P. 7147.)

4. *Register of Wills.*

(a) He shall collect a State Tax of fifty cents for each probate of a will or grant of letters, and account therefor annually to the Auditor General and pay the tax to the State Treasurer.

6 April 1830, sec. 5 and 7, P. L. 273 (4 P. 4595.)

15 March 1832, sec. 34 and 36. P. L. 144 (4 P. 4079.)

(b) He shall be the agent of the Commonwealth for the collection of the direct and collateral inheritance tax of resident decedents and shall account therefor to the Auditor General.

30 June 1919. No. 258.

5. *Recorder of Deeds.*

(a) He shall collect and account to the Auditor General and pay to the State Treasurer all State taxes for recording.

6 April 1830, sec. 4, P. L. 273 (4 P. 4595.)

5 April 1848, sec. 1. P. L. 335 (4 P. 4596.)

6. *County Commissioners.*

They are required:

(a) To transmit to the Secretary of the Commonwealth an annual statement of money paid by the counties for support of any penitentiary or jail and for the Criminal Courts.

15 May 1841, sec. 9. P. L. 395 (1 P. 867.)

(b) To transmit to the Governor the returns of their respective assessors.

6 Jan. 1821, sec. 2. 7 Smith's 342 (1 P. 587.)

(c) To prepare ballots for primary elections and certify the returns for Federal and State offices to the Secretary of the Commonwealth.

12 July 1913. P. L. 719 (5 P. 6022.)

(d) To account to the Auditor General for election expenses.

13 June 1907, sec. 2. P. L. 596 (5 P. 6027.)

(e) To record the list of those persons liable to enrollment in the militia.

9 May 1899, sec. 3. P. L. 266 (3 P. 2532.)

(f) To make return annually to the Secretary of Internal Affairs of all taxes collected in the counties, (The Boards of Revision of Taxes are included.)

15 May 1874. P. L. 193; 9 May 1889 P. L. 157 (4 P. 4725.)

(g) To cause the State personal property tax to be collected.

29 April 1844, sec. 40. P. L. 501 (4 P. 4541.)

17 June 1913. P. L. 507 (7 P. 7613.)

(h) To furnish to the Secretary of Internal Affairs statistics and information relating to the collection and assessment of taxes.

23 May 1919. No. 131.

7. *County Treasurer.*

He is required:

(a) To sue for the recovery of the mercantile license tax not paid before July 1 and remit the amount collected to the State Treasurer.

21 July 1919. No. 436.

(b) To collect and pay to the State Treasurer the State liquor license tax.

30 July 1897. P. L. 469 (2 P. 2331.)

(c) To collect the inheritance taxes until the Register of Wills shall have entered bond.

30 June 1919. No. 258.

(d) To pay over to the State the personal property tax as fast as it is collected.

29 April 1844, sec. 40. P. L. 501 (4 P. 4541.)

(e) To pay the pensions provided by law to soldiers' and soldiers' widows and to settle with the State Treasurer.

14 April 1834. P. L. 290 (3 P. 3498.)

(f) To make annual return to the Auditor General of the amount of indebtedness outstanding by his county.

11 May 1911. P. L. 236 (7 P. 7629.)

(g) With the Auditor General, he appoints the mercantile appraisers in cities of the first class.

17 July 1919. No. 403.

8. *Surveyors.* None.

9. *Auditor and Controller.*

They are required:

(a) To audit the accounts of the County Treasurer with the County and the State.

15 April 1834, sec. 49. P. L. 545 (1 P. 861.)

27 June 1895, sec. 15. P. L. 403 (1 P. 873.)

10. *Clerks of the Courts.* See Prothonotaries..

11. *District Attorney.*

He signs all bills of indictment and conducts prosecutions in the name of the Commonwealth or when the State is a party.

II. LOCAL EXECUTIVE PUBLIC OFFICERS CREATED BY STATUTE.

1. *Assessors.*

(a) They shall annually at the time of taking their assessment make a list of persons liable to enrollment in the militia.

9 May 1899, sec. 3. P. L. 266 (3 P. 2532.)

(b) They are required to make lists of all taxable persons in their districts, and also lists of deaf, dumb and blind persons which lists, after revision, are forwarded to the Governor by the Commissioners.

6 Jan. 1821. 7 Smith's 341; 26 March 1821. 7 Smith's 393; 31 March 1836, sec. 2. P. L. 328 (1 P. 586.)

2. *Burgesses.*

(a) The burgess or other chief officer of each incorporated district or borough is required to make return to the Auditor General of the amount of indebtedness outstanding by the district.

11 May 1911. P. L. 236 (7 P. 7629.)

3. *Treasurer of School District.*

Same provisions as in the case of a burgess.

(NOTE: "P" in parentheses refers to Purdon's Digest 13th Ed.)

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 18

LOCAL GOVERNMENT—CONSTITUTIONAL RESTRICTIONS.

Harrisburg, Pa., Jan. 13, 1920.

Dr. Edgar Fahs Smith,

Chairman, Committee No. 5.

Dear Sir: I understand that you desire a memorandum on Existing Constitutional Restrictions with Respect to the Creation and Powers of Local Governments.

A. PRESENT POLITICAL SUBDIVISIONS.

Five kinds of municipalities exist in Pennsylvania and are expressly recognized in the Constitution. They are:

1. Counties.
2. Cities.
3. Boroughs.
4. Townships.
5. School Districts.

B. RESTRICTIONS COMMON TO ALL MUNICIPALITIES.

With respect to all of these, the General Assembly is forbidden to enact local or special legislation creating them, altering their boundaries, or affecting their respective governments (Art. III, sec. 7). Nor can this prohibition be circumvented by a statute which leaves to the municipality itself the determination of its frame of government. The General Assembly may classify each group of munici-

palities but the form of government for each class must be prescribed by general law (Pittsburgh's Petition, 138 Pa. 401, 430.)

There are certain other restrictions which apply to all kinds of municipalities,

(a) They cannot give or lend money to or become stockholders in a private corporation.

(Art. IX, sec. 7.)

(b) Their borrowing power is limited.

(Art. IX, secs. 8 and 15.)

(c) The Commonwealth cannot assume their debts, except in cases of rebellion or war.

(Art. IX, sec. 9.)

(d) If they borrow money they must at the same time levy a tax sufficient to pay interest and principal within a prescribed period.

(Art. IX, secs. 8, 10, 15.)

(e) Municipal functions cannot be delegated by the General Assembly to any special commission, such, for instance, as "sidewalk commissioners."

(Art. III, sec. 20; Porter v. Shields, 200 Pa. 241.)

C. PARTICULAR RESTRICTIONS.

Other restrictions imposed upon the General Assembly are as follows.

1. *Counties.*

(a) Creation.

A new county may be carved out of one or more old counties, provided that this does not reduce the size of any of the counties concerned below four hundred square miles or the population below 20,0000, and provided also that the line of the new county is over ten miles from the county seat of any county so divided. (Art. XIII).

Subject to these restrictions, the General Assembly may provide by general law for the merger of counties, for the transfer of part of one county to another, and for the creation of new counties out of the territory of one or more old counties.

(b) Form of Government and Powers.

Article XIV of the Constitution prescribes eleven county officers by name. It also prescribes for the election of county officers, their qualification, term of office and the method of their compensation.

Subject to these restrictions, the General Assembly by general law provide for the form and powers of government of counties.

2. *Cities.*

(a) Creation.

Article XV, Section 1 of the Constitution provides that "cities shall be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same." The General Assembly, in providing for the chartering of third class cities has gone further than the Constitution and has allowed a city to be created out of two or more contiguous townships or boroughs having together a population of 10,000. This is apparently constitutional, since the word "may" is permissive only. (Commonwealth v. So. Bethlehem, 248 Pa. 581). It follows that cities may be chartered under general laws, and that the territory taken to make up the city may include all or parts of any number of other subdivisions. Additions to cities may be provided for in the same way.

(b) Form of Government.

Subject to limitations set forth above in B, the General Assembly may by general law prescribe any form of government whatever for cities.

(c) Powers.

Every city must have a sinking fund to retire its bonds. Subject to this restriction and to those set forth above in B, the General Assembly may give to cities any of the powers of government.

3. *Boroughs.*

(a) Creation.

The creation and expansion of boroughs may be provided for by general law without respect to existing territorial boundaries. That is, the General Assembly may provide for the formation or increase of boroughs out of one or more cities, boroughs or townships, or out of part of any of these even though county lines be changed by doing so.

(b) Form of Government and Powers.

The authority of the General Assembly in these respects is limited only by the provisions set forth above in B, which are common to all municipalities.

4. *Townships.*

(a) Creation.

The whole state outside of cities and boroughs is now divided into townships. The General Assembly may by general law alter the boundaries of these townships in any way whatever, irrespective of county lines, and may provide for the transfer of part or all of a township to another township or to a borough or city.

(b) Form of Government and Powers.

The authority of the General Assembly in these respects is limited only by the provisions set forth above in B, which are common to all municipalities.

5. *School Districts.*

(a) Creation.

There is no limitation with respect to the creation and transfer of school districts except the requirement that special and local legislation be avoided.

(b) Form of Government and Powers.

The authority of the General Assembly in these respects is limited only by the provisions set forth above in B, which are common to all municipalities.

D—NEW FORMS OF MUNICIPALITIES.

The growth of cities, and especially of Philadelphia, suggest a further question: Can the General Assembly create a new form of municipality to discharge certain of the functions of local government? For example, would an act be constitutional which created the Metropolitan Area of Philadelphia, embracing the present counties of Philadelphia, Bucks, Montgomery and Delaware, and which gave to the duly elected officials of the new municipality power to establish and regulate parks, to maintain a system of police, to protect the public health and to conserve the natural resources of the locality? Such an act would of course leave otherwise untouched the powers of local government in the several cities, counties, boroughs, townships and school districts of the Area.

The power of the General Assembly to take such action under the present constitution is certainly not free from doubt.

There are certain indications that the power exists. In addition to the five kinds of municipalities already referred to, the Constitution suggests the possible existence of others. In Article III, section 7, special laws are forbidden "incorporating cities, towns or *villages*." In article IX, section 7, the General Assembly is forbidden to authorize "any county, city, borough, township or *incorporated district*" to

become a stockholder in any private corporation. And in Art. IX, section 8, restrictions are imposed upon the borrowing power of "any county, city, borough, township, school district, or *other municipality or incorporated district.*"

These provisions and especially the last appear to recognize the right of the General Assembly to create political subdivisions other than those now in existence. But, if this be so, it is almost inconceivable that the restrictions with respect to local and special legislation are not applied also to such new kinds of municipalities. That they do not apply is plain, because in every pertinent clause of Article III, section 7, the familiar types of municipalities are recited by name,—except for the mention of "villages" as noted above.

It must be admitted, however, that the Constitution contains no express prohibition of the right to create new kinds of municipalities, unless such a prohibition be intended by Article III, section 20, which reads:

> "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

This section covers cases in which it is sought to create within a municipality a new agency to perform municipal functions, without making the new agency a part of the existing municipal government. (Moll v. Norrow, 253 Pa. 442.) It does not appear that it forbids the creation of a new kind of municipality, e. g., a metropolitan area, for which a form of government is created and to which the performance of certain municipal functions is assigned.

But the question of the constitutionality of an act creating metropolitan areas is certainly not free from doubt. A new constitution should undoubtedly contain such provisions as to put the matter beyond dispute, if it be desired to empower the General Assembly to create kinds of municipalities other than the five now existing.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 19

CHARITABLE APPROPRIATIONS—BASIS AND AMOUNTS OF 1919 APPROPRIATIONS.

Harrisburg, Pa., Jan. 19, 1920.

Hon. George E. Alter,
Chairman, Committee No. 1.

Dear Sir I understand you desire a Memorandum on The Basis and Amounts of 1919 Appropriations by the General Assembly.

In order to obtain the information desired I submitted seven questions to Bromley Wharton, Secretary of the State Board of Public Charities. I submit herewith the questions with answers based upon the information given me by Mr. Wharton.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

QUESTION I.

State the amount appropriated by the General Assembly of 1919 to each charitable institution not controlled by the State, the amount expended by each such insitution for maintenance, and the amount expended by each such institution for free service.

The following table gives this information. It must be remembered that the amounts in column 2 represent appropriations for two years, running from June 1, 1919 to May 31, 1921, while the amounts

in columns 3 and 4 represent the cost of maintenance and of free service, respectively, for only one year. It should also be noted that the 1919 appropriation figures are taken from an unofficial record made by the executive clerk in the Governor's office. Most of the 1919 appropriation bills have not yet been printed.

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Adrian Hospital, Punxsutawney, Jefferson Co.,	$45,000 00	$43,900 05	$28,474 74
Allegheny General Hospital, Allegheny, Allegheny Co.,	200,000 00	325,553 58	111,605 28
Allegheny Valley Hospital, Coudersport, Potter Co.,	.....	.....	.....
Allegheny Valley General Hospital, Tarentum, Allegheny Co.,	18,000 00	21,534 68	4,153 38
Allentown Hospital, Allentown, Lehigh Co.,	41,000 00	167,703 06	35,888 08
Altoona Hospital, Altoona, Blair Co.,	59,000 00	78,223 38	29,475 60
American Hospital for Diseases of the Stomach, Philadelphia,	12,000 00	30,734 45	6,184 26
American Oncologic Hospital, Philadelphia,	25,000 00	28,656 34	14,475 76
Barnes, Simon H., Memorial Hospital, Susquehanna, Susquehanna Co.,	4,000 00	7,117 33	1,678 65
Beaver Valley General Hospital, New Brighton, Beaver Co.,	20,000 00	35,730 02	9,031 20
Bedford County Hospital, Bedford, Bedford Co.,	.....	.....	.....
Bellefonte Hospital, Bellefonte, Centre Co.,	20,000 00	20,618 14	10,897 36
Berwick Hospital, Berwick, Columbia Co.,	10,000 00	14,745 19	5,238 72
Blair, J. C., Memorial Hospital and Training School for Nurses, Huntingdon, Huntingdon Co.,	15,000 00	33,429 97	7,203 57
Braddock General Hospital, Braddock, Allegheny Co.,	40,000 00	84,348 77	58,343 43

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Bradford Hospital, Bradford, McKean Co.,	24,000 00	52,566 14	19,688 83
Brownsville General Hospital, Brownsville, Fayette Co.,	23,500 00	29,409 74	12,052 22
Bloomsburg Hospital,	11,000 00	20,809 15	11,749 92
Brookville Hospital, Brookville,	5,000 00	New Institution.	
Buhl, Christian H., Hospital, Sharon, Mercer Co.,	25,000 00	49,318 02	10,737 32
Butler County General Hospital, Butler, Butler Co.,	20,000 00	33,894 45	9,675 00
Cambria Iron Company's Hospital, Johnstown, Cambria Co.,			
Canonsburg General Hospital, Canonsburg, Washington Co.,	6,400 00	12,656 75	3,116 50
Carbondale Hospital, Carbondale, Lackawanna Co.,	35,000 00	33,586 86	16,869 23
Carlisle Hospital,	18,000 00	22,401 81	9,103 68
Chambersburg Hospital, Chambersburg, Franklin Co.,	13,000 00	19,427 99	6,510 85
Charity Hospital, Norristown, Montgomery Co.,	22,000 00	40,854 86	11,267 39
Charity Hospital, Philadelphia,	4,000 00	5,484 37	
Charleroi Hospital,	8,000 00	13,925 98	2,489 40
Chester Hospital, Chester, Delaware Co.,	74,000 00	83,251 72	36,581 00
Chester County Hospital, West Chester, Chester Co.,	18,000 00	44,949 95	9,018 75
Chestnut Hill Hospital, Chestnut Hill, Philadelphia,	2,000 00	45,575 23	992 31
Children's Homeopathic Hospital, Philadelphia,	65,000 00	76,500 09	37,212 39
Children's Hospital, Philadelphia,			
Children, Hospital, Pittsburgh, Allegheny Co.,	54,800 00	59,653 45	40,400 10
Citizens General Hospital, New Kensington,	16,000 00	33,418 94	8,328 88
City Hospital Association of Washington, Washington Co.,	12,000 00	27,003 16	6,938 35

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
City Hospital, DuBois, ...	5,000 00	New Institution.	
Clearfield Hospital, Clearfield, Clearfield Co., ...	23,000 00	45,260 02	11,824 64
Coatesville Hospital, Coatesville, Chester Co., ...	24,000 00	26,123 57	11,870 58
Columbia Hospital, Columbia, Lancaster Co., ...	15,000 00	14,654 92	8,937 72
Columbia Presbyterian Hospital, Wilkinsburg, Allegheny Co., ...	52,000 00	130,027 76	26,265 96
Conemaugh Valley Hospital, Johnstown, Cambria Co., ...	67,000 00	89,898 87	33,488 29
Corry Hospital, Corry, Erie Co., ..	16,000 00	30,185 80	8,154 80
Crozer Hospital, Chester, Delaware Co., ...	.....	.....	.....
Douglass, Fred'k, Hospital, Philadelphia, ...	22,000 00	30,408 03	15,786 64
DuBois Hospital, DuBois, Clearfield Co., ...	25,000 00	25,533 41	14,514 88
Easton Hospital, Easton, Northampton Co., ...	29,000 00	66,159 20	14,592 60
Elk County General Hospital, Ridgway, Elk Co., ...	21,000 00	29,603 27	10,521 60
Ellwood City Hospital, Ellwood City, ...	4,000 00	6,699 31	1,056 78
Episcopal Hospital, Philadelphia, ..	.....	.....	.....
Eye and Ear Hospital, Pittsburgh, .	42,000 00	47,260 80	20,798 40
Fabrani Italian Hospital, Philadelphia, ...	.....	.....	.....
Frankford Hospital, Philadelphia, .	62,000 00	78,624 18	31,324 16
Franklin Hospital, Franklin, Venango Co., ...	13,000 00	18,574 95	3,398 50
Garrettson Hospital, Philadelphia, .	20,300 00	30,698 65	10,157 70
General Hospital, Stroudsburg, ...	4,000 00	6,260 34	2,043 52
Lankenaw Hospital, Philadelphia, ..	25,000 00	259,659 69	6,485 27
Germantown Hospital, Germantown, Philadelphia, ...	30,000 00	132,646 25	81,344 00
Good Samaritan Hospital, Lebanon, Lebanon Co., ...	22,000 00	33,099 14	11,398 38
Grand View Hospital, Sellersville, .	9,000 00	12,503 66	4,533 75

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Greene County Hospital, Waynesburg,	.....	.....	.....
Greenville Hospital, Greenville, Mercer Co.,	$11,000 00	$14,479 59	$5,139 09
Grove City Hospital, Grove City, Mercer Co.,	8,000 00	6,922 13	2,813 92
Gynecean Hospital, Philadelphia, ..	26,000 00	24,350 38	15,822 01
Hahnemann Hospital, Philadelphia,	140,000 00	203,798 87	84,752 47
Hahnemann Hospital, Scranton, Lackawanna Co.,	34,000 00	57,504 18	16,968 70
Hamot Hospital, Erie, Erie Co.,	50,000 00	118,983 68	27,981 88
Harrisburg Hosptial, Harrisburg, .	40,000 00	109,057 58	17,475 00
Homeopathic Hosptial, W. Chester,	14,400 00	18,370 80	7,200 12
Harrisburg Polyclinic Hospital, Harrisburg,	8,000 00	15,520 92	3,149 44
Homeopathic Medical and Surgical Hosptial, Pittsburgh,	148,000 00	175,092 82	81,57$ 28
Homeopathic Hospital, Reading, Berks Co.,	20,500 00	36,173 32	10,020 78
Homestead Hospital, Homestead, Allegheny Co.,	20,000 00	23,637 40	13,525 72
Howard Hospital, Philadelphia, ..	27,000 00	64,359 67	13,539 16
Indaina Hospital, Indiana,	26,000 00	44,758 05	13,162 74
Jefferson Hospital, Philadelphia, ..	200,500 00	352,668 23	93,458 10
Jewish Hospital, Branchtown, Philadelphai,	80,000 00	133,730 64	57,317 45
Jewish Maternity Hospital, Philadelphia,	.....	.....	.....
Johnstown City Hospital, Johnstown, Cambria Co.,	12,000 00	20,536 69	6,352 50
Kane Summit Hospital, Kane, McKean Co.,	11,000 00	33,666 01	5,451 04
Kensington Hospital for Women, Philadelphia,	22,500 00	49,205 71	10,260 08
Kittanning Hospital, Kittanning, Armstrong Co.,	8,000 00	10,272 58	5,287 66
Lancaster General Hospital, Lancaster, Lancaster Co.,	45,000 00	82,147 33	22,645 88

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Latrobe Hospital, Latrobe, Westmoreland Co.,	14,500 00	20,099 13	6,485 27
Lewistown Hospital, Lewistown, Mifflin Co.,	20,000 00	27,003 91	10,051 08
Locust Mountain Hospital, Shenandoah,	10,000 00	New Institution.	
Lock Haven Hospital, Lock Haven, Clinton Co.,	40,000 00	36,595 91	24,436 68
Magee, Elizabeth Steel, Maternity Hospital, Pittsburgh, Allegheny Co.,	.....	.....	.....
Markleton General Hospital, Markleton, Somerset Co.,	14,000 00	10,393 21	8,290 40
Maternity Hospital, Harrisburg, Dauphin Co.,	.....	.....	.....
Maternity Hospital, Philadelphai,	7,400 00	9,642 95	3,725 37
McKeesport Hospital, McKeesport, Allegheny Co.,	96,000 00	127,878 26	34,304 70
Meadville City Hospital, Meadville, Crawford Co.,	23,000 00	28,403 76	11,623 08
Medico Chirurgical Hospital, Philadelphia,	50,000 00	152,533 47	45,124 80
Mercy Hospital of Altoona, Altoona, Blair Co.,	20,000 00	24,911 72	7,890 96
Mercy Hospital, Johnstown, Cambria Co.,	60,000 00	44,249 89	17,457 75
Mercy Hospital and Nurse School, Philadelphia,	40,000 00	11,965 99	7,113 60
Mercy Hospital, Pittsburgh,	192,000 00	218,925 60	124,702 55
Mercy Hospital, Wilkes-Barre, Luzrene Co.,	80,000 00	72,627 20	38,514 33
Methodist Hospital, Philadelphia,	.....	.....	.....
Mid-Valley Hospital, Blakely, Lackawanna Co.,	20,000 00	21,377 70	9,146 88
Miner's Hospital, Spangler, Cambria Co.,	14,000 00	26,836 79	6,945 48
Misericordia, Philadelphia,	50,000 00	New Institution.	
Monongahela Hospital, Monongahela, Allegheny Co.,	18,000 00	38,803 82	8,754 48

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Monroe County Hospital, Stroudsburg, Monroe Co., ...	.....	.....	.....
Montefiore Hospital, Pittsburgh, .	45,000 00	65,104 61	28,378 92
Mt. Pleasant Hospital, Mt. Pleasant, Westmoreland, Co., ...	23,000 00	28,878 17	11,817 17
Mount Sania Hospital, Philadelphai,	125,000 00	91,754 70	81,066 31
Nesbit West Side, Dorranceton, ..	6,000 00	21,979 54	6,428 25
Nanticoke Hospital, Nanticoke, Luzerne Co., ...	.....	.....	.....
Nason Hospital, Roaring Spring, Blair Co., ...	14,000 00	17,355 98	7,009 65
Nat Stomach, Philadelphia, ...	3,000 00	New Institution.	
New Castle Hospital, New Castle, Lawrence Co., ...	25,000 00	13,567 61	7,886 68
North Pennsylvania General Hospital and Sanatorium, Austin, Potter Co., ...	6,000 00	6,016 03	2,371 62
Northeastern, Philadelphai, ...	5,000 00	New Institution.	
Northwestern General Hospital, Philadelphia, ...	21,000 00	31,794 34	12,949.47
Ohio Valley Hospital, Mckees Rocks, Allegheny Co., ...	35,000 00	39,487 95	18,771 02
Oil City Hospital, Oil City, Venango Co., ...	23,000 00	40,395 75	12,737 67
Packer, Mary M., Hospital, Sunbury, Northumberland Co., ...	18,000 00	17,070 13	8,951 70
Packer, Robert, Hospital, Sayre, Bradford Co., ...	40,000 00	119,448 62	23,850 71
Panther Creek Hospital, Coal Dale, Schuylkill Co., ...	.....	.....	.....
Passavant Hospital, Pittsburgh, ..	32,000 00	81,228 68	22,837 10
Pennsylvania Hospital, Philadelphai,	.....	.....	.....
Pennsylvania Epileptic Hospital and Colony Farm, Oakbourne, Chester Co., ...	18,000 00	26,028 48	6,840 00
People's Co-operative Hospital, Sayre, Bradford Co., ...	.....	.....	.....

HOSPITALS	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Philadelphia Lying-in Charity Hospital, Philadelphia,	28,000 00	27,916 03	14,876 14
Philadelphia Orthopaedic Hospital, Philadelphia,	50,000 00	108,175 13	24,395 20
Philadelphia Polyclinic Hospital, Philadelphia,	84,000 00	93,796 44	42,883 89
Phoenixville Hospital, Phoenixville, Chester Co.,	26,000 00	25,963 01	13,154 08
Pittsburgh Hospital (Sisters of Charity), Pittsburgh,	80,000 00	92,699 31	45,486 90
Pittston Hospital, Pittston, Luzerne Co.,	20,000 00	25,530 48	10,129 12
Pottstown Hospital, Pottstown, Montgomery Co.,	13,000 00	29,897 77	6,253 17
*Pottstown Homeopathic,	2,000 00	7,916 38	3,792 14*
Pottsville Hospital, Pottsville, Schuylkill Co.,	50,000 00	72,075 09	26,283 18
Presbyterian Hospital, Philadelphia,	.....	.....	.....
Presbyterian Hospital, Allegheny, Allegheny Co.,	40,000 00	137,101 14	20,628 00
Preston Retreat, Philadelphia,	.....	.....	.....
Prince of Peace Hospital, Philadelphia,	.....	.....	.....
Providence Hospital, Beaver Falls, Beaver Co.,	20,000 00	35,326 17	16,466 49
Providence General, Philadelphia,	5,000 00	New Institution.	
Punxsutawney Hospital, Punxsutawney, Jefferson Co.,	22,600 00	34,894 30	11,382 16
Ratti, Joseph, Hospital, Bloomsburg, Columbia Co.,	.....	.....	.....
Reading Hospital, Reading, Berks Co.,	47,000 00	89,998 01	28,681 45
Reinemann Maternity Hospital, Pittsburgh,	.....	.....	.....
Renovo Hospital, Renovo, Clinton Co.,	8,000 00	9,762 43	4,019 62
Rochester General Hospital, Rochester, Beaver Co.,	22,000 00	38,014 16	12,199 14
Roosevelt Hospital, Philadelphia,	17,000 00	20,747 29	9,271 89

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Rouse Hospital, Youngsville, Warren Co.,	.....	.....	.....
Sacred Heart, Allentown,	10,000 00	29,043 39	4,958 34
Salvation Army Hospital, Philadelphia,	.....	.....	.....
St. Agnes Hospital, Philadelphia,	50,000 00	125,071 76	66,942 50
St. Christopher's Hospital for Children, Philadelphia,	18,000 00	32,205 98	10,537 52
St. Francis Hospital, Pittsburgh,	200,000 00	306,802 44	112,708 05
St. John's Hospital, Allegheny, Allegheny Co.,	25,000 00	77,068 50	10,482 84
St. Joseph's Hospital, Lancaster, Lancaster Co.,	.....	.....	.....
St. Joseph's Hospital, Philadelphia,	75,000 00	141,980 89	50,142 42
St. Joseph's Hospital, Pittsburgh,	43,000 00	63,381 27	23,828 55
St. Joseph's Hospital, Reading, Berks Co.,	35,000 00	65,410 70	29,385 54
St. Luke's Hospital, Bethlehem, Northampton Co.,	45,000 00	131,045 81	45,991 67
St. Luke's Homeopathic Hospital, Philadelphia,	40,000 00	51,673 60	21,045 92
St. Margaret's Memorial Hospital, Pittsburgh,	.....	.....	.....
St. Mary's Hospital, Philadelphia,	100,000 00	113,617 35	74,951 49
St. Mary Keller, Scranton,	5,000 00	New Institution.	
St. Timothy's Hospital, Philadelphia,	50,000 00	61,972 80	33,098 50
St. Vincent's Hospital, Erie, Erie Co.,	60,000 00	122,919 21	36,244 78
Samaritan Hospital, Philadelphia,	80,000 00	118,644 13	41,113 25
Sewickley Valley Hospital Association, Sewickley, Allegheny Co.,	20,000 00	46,249 55	11,063 22
Shenango Valley Hospital, New Castle, Lawrence Co.,	27,000 00	50,488 75	13,636 72
South Side Hospital, Pittsburgh, Allegheny Co.,	112,000 00	182,812 92	73,215 66
Spencer Hospital, Meadville, Crawford Co.,	15,000 00	22,861 27	10,492 09

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Springdale General Hospital, Springdale, Allegheny Co.,	.....	.....	.....
State Hospital for Injured Miners, Ashland, Schuylkill Co.,	.....	.....	.....
State Hospital for Injured Persons, Blossburg, Tioga Co.,	.....	.....	.....
State Hospital for Injured Persons, Connellsville, Fayette Co.,	.....	.....	.....
State Hospital for Injured Persons of the Middle Coal Field, Hazleton, Luzerne Co.,	.....	.....	.....
State Hospital for Injured Persons, Mercer, Mercer Co.,	.....	.....	.....
State Hospital for Injured Persons, Philipsburg, Centre Co.,	.....	.....	.....
State Hospital of the Trevorton, Shamokin and Mt. Carmel Coal Fields, Shamokin, Northumberland Co.,	.....	.....	.....
State Hospital of the Northern Anthracite Coal Regions, Scranton, Lackawanna Co.,	.....	.....	.....
Stetson Hospital, Philadelphia, ...	8,000 00	50,243 80	5,676 92
Suburban General Hospital, Bellevue, Allegheny Co.,	16,000 00	39,101 74	7,925 40
Taylor Hospital Association, Taylor, Lackawanna Co.,	28,000 00	17,041 88	14,178 85
*Taylor Hospital, Ridley Park, ..	8,000 00	19,460 65	6,456 78
Titusville Hospital, Titusville, Crawford Co.,	11,000 00	15,347 21	7,195 25
Todd Hospital, Carlisle, Cumberland Co.,	.....	.....	.....
Uniontown Hospital, Uniontown, Fayette Co.,	43,000 00	64,490 74	20,454 00
University of Pennsylvania Hospital, Philadelphia,	190,000 00	400,395 09	122,070 02
Warren Emergency Hospital, Warren, Warren Co.,	23,000 00	37,766 16	11,692 56
Washington Hospital, Washington, Washington Co.,	14,000 00	25,271 02	5,852 00

*Not included in Statistical Book.

HOSPITALS.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Wayne County Hospital Association, Honesdale, Wayne Co., ...	.....	.....	.....
*Waynesburg City Hospital, Waynesburg, Greene Co., ...	7,000 00	10,839 33	4,454 72
Waynesburg Hospital, Waynesburg, Greene Co., ...	.....	.....	.....
Western Pennsylvania Hospital, Pittsburgh, ...	160,000 00	389,902 10	75,994 08
Westmoreland Hospital Association, Greensburg, Westmoreland Co., .	28,500 00	58,670 41	14,232 25
West Philadelphia General Homeopathic Hospital, Philadelphia, ...	20,000 00	27,135 22	11,637 87
West Philadelphia Hospital for Women, Philadelphia, ...	20,000 00	51,229 97	10,110 75
West Side Hospital, Scranton, Lackawanna Co., ...	55,000 00	34,234 57	30,157 60
Wilkes-Barre Hospital, Wilkes-Barre, Luzerne Co., ...	90,000 00	181,721 55	84,885 01
Williamsport Hospital, Williamsport, Lycoming Co., ...	67,000 00	76,654 05	33,371 60
Wills Hospital, Philadelphia, ...	60,000 00	54,562 86	32,495 76
Williams Valley Williamstown, ...	8,000 00	New Institution.	
Windber Hospital, Windber, Somerset Co., ...	.....	.....	.....
Women's Homeopathic Hospital Association, Philadelphia, ...	42,000 00	71,532 23	20,873 16
Women's Hospital, Philadelphia, ..	63,000 00	109,930 46	33,633 00
Women's Medical College of Pennsylvania Hospital, Philadelphia, ...	48,000 00	68,122 35	27,856 35
Women's Southern Homeopathic Hospital, Philadelphia, ...	20,000 00	34,558 57	11,592 24
Working Man's Hospital, Berlin, Somerset Co., ...	.....	.....	.....
Wyoming Valley Homeopathic Hospital, Wilkes-Barre, Luzerne Co.,	11,000 00	15,901 85	5,931 64
York Hospital, York, York Co., ...	28,000 00	43,085 60	13,892 36
Total, ...	$6,277,900 00	$10,288,652 63	$3,601,156 91

*Not included in Statistical Book.

SANATORIA.	Appropriation by General Assembly of 1919 for Two-Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Amount Spent for Free Service During Year Ending May 31, 1918.
Grand View Hospital for Consumptives, Oil City, Venango Co., and Bon Air (Northwestern Anti-Tuberculosis League),	$10,000 00	$50,693 77	$8,209 04
Phipps Institute for Consumptives, Philadelphia,	.....	.....	.....
Home for Consumptives, Chestnut Hill, Philadelphia,	.....	.....	.....
Philadelphia Jewish Sanatorium for Consumptives, Eaglesville, Montgomery Co.,	50,000 00	60,304 38	25,260 43
Rush Hospital for Consumptives, Philadelphia,	58,000 00	44,428 34	28,862 89
Scranton Society for the Prevention and Cure of Tuberculosis, West Mountain, Scranton, Lackawanna Co.,	7,200 00	10,472 07	3,572 20
Tuberculosis League of Pittsburgh, Pittsburgh,	30,000 00	57,862 14	9,939 84
Wyoming Valley Society for Consumptives, Wilkes-Barre, Luzerne Co.,	.....	.....	.....
Total,	$155,200 00	$223,760 70	$75,844 40

Note:—In the Statistical Book Hospitals not receiving State aid are included in the lists showing the expenditures.

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Aged Colored Women's Home, Williamsport, Lycomnig Co.,	$2,400 00	$1,376 15
Agricultural and Mechanical Industrial School; for Colored Boys and Girls, Jumonville, Fayette Co.,	.....	.....
Almira Home for Aged Ladies, New Castle, Lawrence Co.,	9,200 00	9,500 33
Allegheny Society to Protect Children, etc., Pittsburgh,	.....	.....
Associated Charities and Humane Society of Lackawanna County, Scranton,	.....	.....
Avery Trade School, Allegheny, Allegheny Co.,	.....	.....
Baptist Home, Philadelphia,	.....	.....
Baptist Orphanage Angora, Philadelphia,	.....	.....
Barclay House, West Chester, Chetser Co.,	.....	.....
Beacon Light Mission, Custer City, McKean Co.,	4,000 00	10,839 36
Beaver County Children's Home, New Brighton	7,000 00	9,955 28
Bedford Street Mission, Philadelphia,	.....	.....
Bethany Home for Colored Children, Philadelphia,	.....	.....
Bethany Orphans' Home, Womelsdorf, Berks, Co.,	.....	.....
Bethesda Orphans' Home, Pittsburgh,	5,600 00	3,519 99
Bethesda Orphans' Home, Chestnut Hill, Philadelphia,	.....	.....
Beulah Anchorage, Reading, Berks, Co.,	4,000 00	3,970 56
Boy's Industrial Home, Oakdale, Allegheny Co.,	20,000 00	29,817 02
Boy's Industrial Home, Williamsport, Lycoming Co.,	5,000 00	23,277 44
Brethren's Home, Neffsville, Lancaster Co.,	.....	.....
Burd Orphan's Asylum, Philadelphia,	.....	.....
Butler Memorial Home, Philadelphia,	.....	.....
Cartr, Jr., Republic, Redington, Northampton Co.,	.....	.....
Catholic Home for Children, Philadelphia,	15,000 00	31,464 96

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Children's Aid Society, Chambersburg, Franklin Co.,	2,000 00	5,250 02
Children's Aid Society, Meadville, Crawford Co.,	6,000 00	7,450 17
Children's Aid Society, Pittsburgh, Allegheny Co.,	20,000 00	46,923 60
Children's Aid Society, Somerset, Somerset Co.,	.....	.....
Children's Aid Society of Pennsylvania, Philadelphia,	55,000 00	220,896 72
Children's Country Week Association, Philadelphia,	.....	.....
Children's Home, Johnstown, Cambria Co.,	.....	.....
Children's Home, Waynesburg, Greene Co., ..	.....	.....
Children's Home, York, York Co., ...	1,000 00	14,255 56
Childrens' Home, Arden, Washington Co., ..	.....	.....
Childrn's Home, South Bethlehem, Northampton Co.,	4,000 00	7,446 40
Children's Industrial Home, Harrisburg, ...	7,500 00	11,837 18
Children's Home of Pennsylvania, Pittsburgh,	.....	.....
Children's Temporary Home, Pittsburgh, ..	.....	.....
Christian Home for Women, Allegheny, Allegheny Co.,	2,000 00	6,968 51
Church Home for Children, Angora, Philadelphia,	.....	.....
Church Home for Children, Jonestown, Lebanon Co.,	.....	.....
Christ Church Hospital Home, Bala, Philadelphia Co.,	.....	.....
Christ Home for Children, Philadelphia, ..	.....	.....
Christian Home, Johnstown, Cambria Co., ..	4,500 00	New Institution.
Christian Home for Girl , Pittsburgh, ...	.....	.....
Church Home, Pittsburgh, ...	.....	.....
Church Home for Children, Philadelphia, ...	.....	.....
Coleman Industrial Home for Colored Boys, Pittsburgh, ...	3,600 00	4,597 84

HOMES.	Amount Spent for Maintenance During Year Ending May 31, 1918.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.
Colestock Old People's Home, Mechanicsburg, Cumberland Co.,	.....	.....
Colored Day Nursery, Harrisburg,	.....	.....
Colored Women's Relief Association, Pittsburgh,	2,000 00	4,243 38
Crittendon, Florence, Home, Erie, Erie Co.,	600 00	2,290 01
Crittendon, Florence, Mission, Harrisburg,	1,600 00	1,196 42
Crittendon, Florence, Mission, Germantown, Philadelphia,	4,000 00	6,223 33
Crittendon, Florence, Mission, Pittsburgh,	1,000 00	1,906 06
Crittendon, Florence, Mission, Scranton, Lackawanna Co.,	4,000 00	4,272 25
Crittendon, Florence, Mission, Wilkes-Barre, Luzerne Co.,	1,400 00	5,403 19
Crittendon, Florence, Home, Williamsport, Lycoming Co.,	2,000 00	1,160 81
Curtis Home, Pittsburgh,	7,000 00	4,921 53
Day Nursery, Baldwin, Philadelphia,	.....	.....
Day Nursery, Willing, Philadelphia,	.....	.....
Day Nursery, Harrison, Philadelphia,	.....	.....
Day Nursery, Northern, Philadelphia,	.....	.....
Day Nursery, J. D. Kent, Philadelphia,	.....	.....
Day Nursery, Kensington, Philadelphia,	.....	.....
Day Nursery, Lombard, Philadelphia,	.....	.....
Day Nursery, Forty-ninth Street, Philadelphia,	.....	.....
Day Nursery and Temporary Home, Allegheny, Allegheny Co.,	.....	.....
De Paul Institute, Scott township, Allegheny Co.,	34,689 20	19,192 00
Door of Blessing, Philadelphia,	.....	.....
Door of Hope, Philadelphia,	.....	.....
Downingtown Industrial School for Colored Youth, Downingtown, Chester Co.,	40,000 00	35,139 13
Drexel, Mary J., Home, Philadelphia,	.....	.....
Easton Home for Friendless Children, Easton, Northampton Co.,	8,000 00	11,573 42

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Elkins Home for Girls, Philadelphia, ...	.....	.....
Elmwood Home, Erie, Erie Co., ...	2,800 00	20,997 36
Emaus Orphan's Home, Middletown, Dauphin Co., ...	.....	.....
Erie Home for the Friendless, Erie, Erie Co.,..	20,000 00	29,399 11
Erie Infants Home, Erie, ...	2,400 00	9,446 43
Evangelical Home for the Aged, Philadelphia,	4,500 00	4,902 96
First Allegheny Day Nursery and Temporary Home for Children, Pittsburgh, ...	4,400 00	6,726 99
Forrest Home, Taconv, Philadelphia Co., ...	.....	.....
Foster Home, Philadelphia, ...	.....	.....
Foulke and Long Institution for Girls. Langhorne, Bucks Co., ...	.....	.....
Franklin Reformatory for Inebriates, Philadelphia, ...	.....	.....
Friends' Home for Children, Philadelphia, ...	4,000 00	7,193 01
Galilee Mission, Philadelphia, ...	.....	.....
George Junior Republic, Grove City, Mercer Co., ...	9,000 00	8,279 09
German Baptist Home, Philadelphia, ...	4,000 00	8,035 68
German Evangelical Lutheran Orphan's Home, Pittsburgh, ...	.....	.....
German Protestant Home, Fairoaks, Allegheny Co., ...	5,000 00	8,132 75
German R. C. St. Joseph's Orphan Asylum of Allegheny County, Pittsburgh, ...	.....	.....
Girard College, Philadelphia, ...	.....	.....
Gusky, J. M., Orphanage and Home of Western Pa., Allegheny, Allegheny Co., ...	.....	.....
Gwynedd Home for Convalescent Children, Gwynedd, Montgomery Co., ...	.....	.....
Haddock Memorial Home, Philadelphia, ...	.....	.....
Hayes Mechanics' Home, Philadelphia, ...	.....	.....
Hebrew Orphan's Home, Philadelphia, ...	.....	.....
Hebrew Sheltering Home, Philadelphia, ...	8,000 00	25,695 84

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Holy Family Private Home, Danville, Montour Co.,	.....	.....
Home for the Aged (Hebrew), Pittsburgh,	.....	.....
Home for the Aged, Philadelphia,	6,000 00	4,362 61
Home for the Aged, Easton, Northampton Co.,	6,000 00	5,904 59
Home for the Aged and Infirm Deaf, Doylestown, Bucks Co.,	.....	.....
Home for the Aged Colored Women, Pittsburgh,	6,000 00	6,353 26
Home for Aged Colored Women, Philadelphia,	.....	.....
Home for Aged Couples, Philadelphia,	.....	.....
Home for Aged Couples and Old Men, Bala, Montgomery Co.,	.....	.....
Home for Colored Children, Allegheny, Allegheny Co.,	4,400 00	12,536 83
Home for Convalescents, West Chester, Chester Co.,	.....	.....
Home for Destitute Colored Children, Philadelphia,	.....	.....
Home for Discharged Prisoners, Philadelphia,	5,000 00	37,489 28
Home for the Friendless, Harrisburg,	7,000 00	8,000 31
Home for the Friendless, Williamsport,	18,000 00	17,684 71
Home for the Friendless Children, Lancaster Co.,	10,000 00	12,208 22
Home for the Friendless, Reading, Berks Co.,	5,000 00	11,651 06
Home for Friendless, Scranton, Lackawanna Co.	11,200 00	19,472 29
Home for Friendless, Pittsburgh,	.....	.....
Home for the Friendless, Wilkes-Barre, Luzerne Co.,	.....	.....
Home for Inebriates, Philadelphia,	.....	.....
Home for the Homeless, Philadelphia,	2,000 00	.....
Home for Orphans of Odd Fellows, Philadelphia,	.....	.....
Home for Reformed Presbyterian Couples, Pittsburgh,	.....	.....
Home for Veterans and Wives of the G. A. R., Philadelphia,	30,000 00	27,320 61

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Hom for Widows, etc., Lebanon, Lebanon Co.,	4,000 00	3,931 05
Home for Widows, Reading, Berks Co.,	4,000 00	7,228 30
Home for Widows and Orphans of Odd Fellows, Ben Avon, Allegheny Co.,	.....	.....
Home of the Little Sisters of the Poor, Pittsburgh (East End),	.....	.....
Home of the Little Sisters of the Poor, Pittsburgh (Penn Ave.),	.....	.....
Home of the Little Sisters of the Poor, Philadelphia,	.....	.....
Home of the Little Sisters of the Poor, Germantown, Philadelphia,	.....	.....
Home of the Little Sisters of the Poor, Allegheny, Allegheny Co.,	.....	.....
Home of the Merciful Savoiur, Philadelphia,	.....	.....
Home of St. Joseph's for Old Ladies, Pittsburgh,	.....	.....
Hospital School for Backward Children, Pittsburgh,	.....	.....
House of Good Shepherd, E. E., Pittsburgh, Troy Hill,	25,000 00	31,069 77
House of the Good Shepherd, Allegheny, Allegheny Co., Lincoln Ave.,	20,000 00	71,641 84
House of the Good Shepherd, Philadelphia,	20,000 00	60,717 01
House of Good Shepherd, Germantown,	9,000 00	41,717 11
House of Good Shepherd, Reading, Berks Co.,	20,000 00	32,137 30
House of Good Shepherd, Scranton, Lackawanna Co.,	15,000 00	36,711 46
House of the Holy Child, Philadelphia,	.....	.....
House of Rest, Philadelphia,	.....	.....
House of St. Michaels and All Angels, Philadelphia,	.....	.....
Howard Institute, Philadelphia,	.....	.....
Improvement Children's Home, Pittsburgh,	.....	.....
Indigent Widows, etc., Philadelphia,	.....	.....
Industrial Home for Colored Working Girls, Pittsburgh,	.....	.....

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Industrial Home for the Dependent Adult Blind Citizens of the City of Pittsburgh, Pittsburgh,	.....	.....
Industrial Home for Crippled Children, Pittsburgh,	25,000 00	27,867 13
Institute for Colored Youth, Cheyney, Delaware Co.,	.....	.....
Jewish Foster Home, Germantown, Philadelphia,	.....	.....
Jewish Sheltering Home, Philadelphia,	6,000 00	17,565 49
Juniata Valley Children's Aid Society, Huntingdon, Huntingdon Co.,	.....	.....
Kaufman, Irene, Settlement, Pittsburgh,	.....	.....
Kingsley House Association, Pittsburgh,	.....	.....
Knights of Pythias Home, Harmony, Butler Co.,	.....	.....
Ladies' G. A. R. Home, Hawkins Station, Allegheny Co.,	35,000 00	21,336 98
Leamy Home, Mt. Airy, Philadelphia,	.....	.....
Long Asylum, Lancaster, Lancaster Co.,	.....	.....
Lutheran Orphan's Home, Topton, Berks Co.,	.....	.....
Lutheran Orphan's Home, Germantown, Philadelphia,	.....	.....
Magdalen Society, Philadelphia,	.....	.....
Masonic Home, Philadelphia,	.....	.....
Messiah Home, Harrisburg,	2,600 00	5,543 78
Messiah Orphanage, Grantham,	3,000 00	4,354 39
Messiah Home, Germantown, Philadelphia,	.....	.....
Methodist Home, Philadelphia,	.....	.....
Methodist Orphanage, Philadelphia,	.....	.....
Midnight Mission, Philadelphia,	3,500 00	7,869 96
National Farm School, Doylestown, Bucks Co.,	20,000 00	63,093 73
Nazarene Home, Philadelphia,	$7,000 00	$6,779 09
Newcastle Industrial Home, New Castle, Lawrence Co.,	.....	.....

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Northern Association for the Relief of the Poor, Philadelphia,	.....	.....
Northern Home for Friendless Children, Philadelphia,	20,000 00	30,568 09
Northern Tier Home, Harrison Valley, Potter Co.,	1,000 00	New Institution.
Northwestern Pennsylvania Humane Society, Erie, Erie Co.,	.....	.....
Nugent, George, Home for Baptists, Germantown, Philadelphia,	.....	.....
Nursery Home, Harrisburg,	5,500 00	8,217 20
Odd Fellows' Home, Meadville, Crawford Co.,	.....	.....
Odd Fellows' Home, Philadelphia,	.....	.....
Odd Fellows' Home for Children, Pittsburgh,	.....	.....
Old Folks Home, Carlisle, Cumberland Co.,	.....	.....
Old Ladies' Home, Wissinoming, Philadelphia,	10,000 00	29,983 54
Old Man's Home, Philadelphia,	.....	.....
Old People's Home, Zelienople, Butler Co.,	.....	.....
Orphans' Asylum of the Holy Family, Emsworth, Allegheny Co.,	35,000 00	19,292 53
Orphans' Home and Asylum for the Aged and Infirm, Philadelphia,	.....	.....
Orphans' Farm School, Zelienople, Butler Co.,	.....	.....
Paradise Protectory and Agricultural School, Abbottstown, Adams Co.,	8,000 00	11,250 28
Passavant Memorial Home, Rochester, Beaver Co.,	15,000 00	19,275 63
Pennsylvania Association for Blind, Pittsburgh,	10,000 00	72,234 40
Penn Asylum for Widows, etc., Philadelphia,	8,000 00	18,532 06
Pennsylvania Home Teaching Society and Free Circulating Library for the Blind, Philadelphia,	12,000 00	8,203 94
Pennsylvania Industrial Home for Blind Women, Philadelphia,	.....	.....
Pennsylvania Industrial School, Eagleville, Montgomery Co.,	.....	.....

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Pennsylvania Memorial Home, Brookville, Jefferson Co.,	14,000 00	12,644 01
Pennsylvania Prison Society, Philadelphia,	.....	.....
Pennsylvania Retreat for Blind Mutes, Philadelphia,	.....	.....
Pennsylvania Seamen's Friend Society, Philadelphia,	4,000 00	13,728 39
Pennsylvania Society to Protect Children, etc., Philadelphia,	.....	.....
Pennsylvania Soldiers' and Sailors' Home, Erie, Erie Co.,	.....	.....
Pennsylvania Working Home for Blind Men, Philadelphia,	35,000 00	341,366 79
Philadelphia Association for the Protection of Colored Women, Philadelphia,	.....	.....
Philadelphia Home for Incurables, Philadelphia,	28,500 00	92,619 24
Philadelphia Home for Infants, Philadelphia,	5,000 00	9,410 80
Philadelphia German Baptist Home, Lawndale, Philadelphia,	.....	.....
Philadelphia Orphans' Asylum, Wallingford, Delaware Co.,	.....	.....
Philadelphia German Protestant Home for the Aged, Lawndale, Philadelphia,	.....	.....
Philadelphia Organization for Charity, Philadelphia,	.....	.....
Philadelphia Protectory for Boys, Protectory Station, Montgomery Co.,	24,000 00	89,113 89
Philadelphia Rescue Home, Philadelphia,	.....	.....
Philadelphia Sanatorium Association, Philadelphia,	.....	.....
Philadelphia Society for the Employment and Instruction of the Poor, Philadelphia,	.....	.....
Pittsburgh Association for the Improvement of the Poor, Pittsburgh, Allegheny Co.,	.....	.....
Pittsburgh Home for Babies, Pittsburgh,	15,000 00	12,021 53
Pittsburgh Home of Shelter (Jewish), Pittsburgh, Allegheny Co.,	.....	.....
Pittsburgh and Allegheny Home for the Friendless, Allegheny, Allegheny Co.,	18,000 00	33,643 10

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Pittsburgh and Allegheny Rescue Mission, Pittsburgh,	.....	.....
Pittsburgh Newsboys' Home, Pittsburgh, ...	20,000 00	34,154 75
Pittsburgh Rescue Home for Girls, Pittsburgh,	.....	.....
Pittsburgh Sunshine Children's Home, Pittsburgh,	4,000 00	4,725 91
Pottsville Benevolent Association, Pottsville, Schuylkill Co.,	4,000 00	New Institution.
Presbyterian Home for Widows, etc., Philadelphia,	.....	.....
Presbyterian Orphanage, Philadelphia,	.....	.....
Protestant Home for Boys, Pittsburgh,	.....	.....
Protestant Home for Incurables, Pittsburgh,..	.....	.....
Protestant Orphan Asylum, Allegheny, Allegheny Co.,	.....	.....
Providence Mission and Rescue Home, Pittsburgh, Allegheny Co.,	1,600 00	3,542 66
Quincy Orphans' Home, Quincy, Franklin Co.,	.....	.....
Rebekah Home, Philadelphia,	.....	.....
Roselia Foundling Home, Pittsburgh,	30,000 00	34,922 40
Rosine Association, Philadelphia,	4,000 00	4,317 50
Roxborough Home for Women, Philadelphia,..	.....	.....
St. Ann's Widows Asylum, Philadelphia,	.....	.....
St. Catherine's Orphan Asylum, Reading, Berks Co.,	2,000 00	6,129 01
St. Edmond's Home for Crippled Children, Philadelphia,	2,000 00	New Institution.
St. Francis Industrial School, Eddington, Bucks Co.,	.....	.....
St. James' Industrial School, Philadelphia,	.....	.....
St. John's Lutheran Home, Allegheny, Allegheny Co.,	.....	.....
St. John's Orphan Asylum, Philadelphia, ...	20,000 00	85,043 88
St. Joseph's Asylum, Erie, Erie Co.,	.....	.....

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
St. Joseph's Asylum, Germantown, Philadelphia,	.....	.....
St. Joseph's Foundling Asylum, Scranton, Lackawanna Co.,	20,000 00	26,230 25
St. Joseph's Home for Boys, Philadelphia,	.....	.....
St. Joseph's Orphan Asylum, Troy Hill, Allegheny Co.,	.....	.....
St. Joseph's Protectory, Norristown, Montgomery Co.,	7,000 00	24,048 34
St. Joseph's Protectory and Industrial School, Pittsburgh,	8,000 00	25,811 50
St. Margaret's House, Philadelphia,	.....	.....
St. Mark's Home for Aged Women, Philadelphia,	.....	.....
St. Michael's Orphan Asylum, Pittsburgh,	.....	.....
St. Patrick's Orphan Asylum, Scranton, Lackawanna Co.,	5,000 00	19,928 27
St. Paul's Orphan Asylum, Reading, Berks Co.,	.....	.....
St. Paul's Orphan Asylum, Idlewood, Allegheny Co.,	.....	.....
St. Paul's Orphan Asylum, Butler, Butler Co.,	.....	.....
St. Regis Home for Working Girls, Pittsburgh,	.....	.....
St. Ritas L. C. B. A. Home for Infants, Pittsburgh,	6,000 00	16,409 24
St. Vincent's Home, Philadelphia (20th and Race Sts.),	15,000 00	66,296 15
St. Vincent's Home, Philadelphia (71st and Woodland Ave.),	16,000 00	69,056 33
St. Vincent's Orphan Asylum, Tacony, Philadelphia,	6,000 00	22,685 30
Salvation Army Rescue and Maternity Home, Bellevue, Allegheny Co.,	3,000 00	6,134 13
Salvation Home and Mat. Hospital, Philadelphia,	2,800 00	16,278 86
Seraphic Home, New Derry, Westmoreland Co.,	.....	.....
Salvation Army Social Settlement and Day Nursery, Pittsburgh,	3,000 00	New Institution.

HOMES.	Appropriated by General Assembly for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Sewickley Fresh Air Home, Sewickley, Allegheny Co.,	.....	.....
Shelter for Colored Orphans, Philadelphia, ...	.....	.....
Sheltering Arms, Philadelphia, ...	.....	.....
Southern Home for Children, Philadelphia, ...	.....	.....
Society of the Holy Family, New Castle, Lawrence Co., ...	.....	.....
Stevens, Thaddeus, Industrial School, Lancaster, Lancaster Co., ...	.....	.....
Sylvan Heights Home for Girls, Harrisburg, ..	10,000 00	7,946 23
Tabor Home for Children, Philadelphia, ...	10,000 00	9,404 47
Temporary Home Association, Philadelphia, ..	.....	.....
Temporary Home for Women, Pittsburgh, ...	.....	.....
Temporary Home for Children, Allegheny, Allegheny Co., ...	.....	.....
Tressler's Orphan Home, Lloysville, Perry Co.,	.....	.....
Union Benevolent Association, Philadelphia, ..	.....	.....
Union Home for Old Ladies, Philadelphia, ...	5,000 00	7,996 17
Union Rescue Mission, Pittsburgh, ...	.....	.....
United Charities of Hazleton, Hazleton, Luzerne Co., ...	3,000 00	7,849 40
United Charities of Luzerne Co., Wilkes-Barre, Luzerne Co., ...	.....	.....
United Evangelical Home, Lewisburg, ...	2,500 00	New Institution.
United Zion Home, Lititz, Lancaster Co., ...	6,000 00	14,473 92
United Presbyterian Women's Association, Wilkinsburg, Allegheny Co., ...	.....	.....
Visiting Nurse Society of Philadelphia, Philadelphia, ...	.....	.....
Visiting Nurses' Association, Pittsburgh, ...	.....	.....
Western Home for Poor Children, Philadelphia,	.....	.....
Western Pennsylvania Humane Society, Pittsburgh, ...	.....	.....
Western Temporary Home, Philadelphia, ...	5,500 00	7,721 15
Western Association for the employment of the Poor, Philadelphia, ...	.....	.....

HOMES.	Appropriated by General Assembly of 1919 for Two Year Period from June 1, 1919, to May 31, 1921.	Amount Spent for Maintenance During Year Ending May 31, 1918.
Westmoreland Children's Aid Society, Greensburg, Westmoreland Co.,	$12,000 00	$16,231 25
Julia White Priscilla Home, LaMott,	1,000 00	New Institution.
Widenor Memorial Home for Crippled Children, Logan, Philadelphia,	.....	.....
Widow's Home, Allegheny, Allegheny Co.,	.....	.....
Williamson Free School of Mechanics' Trades, Williamson, Delaware Co.,	.....	.....
Williamsport Training School for Girls, Williamsport, Lycoming Co.,	8,000 00	5,443 33
Robert Wood Industrail Home, Philadelphia,	2,000 00	2,686 98
Woods Run Industrial Home, Allegheny, Allegheny Co.,	4,000 00	9,528 62
York Society to Protect Children and Aged Persons, York, York Co.,	8,000 00	7,430 30
Totals,	$1,202,289 20	$2,662,757 72

SEMI-STATE INSTITUTIONS.	Appropriated by General Assembly of 1919 for Two Year Period from June 1, 1919, to May 31, 1921.	Receipts for year ending May 31, 1918.	Expenses for year ending May 31, 1918.
Dixmont Hospital for the Insane, Dixmont,	$145,000 00	$278,911 54	$295,733 29
Western Penna. Institution for the Instruction of the Deaf and Dumb, Edgewood Park,	189,000 00	106,331 78	97,394 56
Penna. Institution for the Instruction of the Blind, Overbrook,	131,250 00	101,009 98	115,675 31
Western Penna. Institution for the Blind, Pittsburgh,	114,100 00	52,838 50	55,443 57
Penna. Traiing School for Feeble-Minded, Elwyn,	516,710 94	348 544 73	323,873 80
Penna. Institution for the Deaf and Dumb, Mt. Airy,	409,500 00	242,384 56	240,581 34
Glen Mills Schools, Glen Mills,	500,000 00	638,071 08	638,071 08
Totals,	$2,005,560 94	$1,768,092 17	$1,766,772 95

In the above table it will be noted that the amount spent for free service is computed for hospitals and sanatoria, but not for semi-state institutions and homes. The Board of Public Charities states that the two last are conducted on a basis quite different from hospitals and sanatoria and that no attempt is made to compute the amount of free service rendered by them.

The institutions referred to as semi-state are those which care for the insane, the deaf, the dumb and the blind. When an appropriation is made to such an institution it is agreed to cover a certain number of free inmates or patients who will thus be state wards. Sanatoria are distinguished from hospitals by the fact that the former are for the isolated treatment of tuberculosis and not for general medical service.

QUESTION 2.

Hospital appropriations for the years 1917-1919 appear by Smull's Handbook to have totalled $5,401,675, while a statement furnished to this Commission by the Board of Public Charities shows that the appropriations for 1919-1921 were $6,277,900. To what is this large increase due?

To make the two totals exactly comparable, the same classification must be used in arriving at each. Smull includes among hospitals six institutions classified by the Board of Public Charities as sanatoria. The records of the Board of Public Charities show appropriations as follows:

	Appropriations by 1917 General Assembly	Appropriations by 1919 General Assembly
Hospitals, ...	$5,247,500	$6,277,900
Sanatoria, ...	136,000	155,200

The actual increase in appropriations to hospitals was therefore $1,030,400. Of this sum $101,000 is accounted for by appropriations to hospitals which did not receive State aid in 1917. ($72,000 of this $101,000 was appropriated without recommendation from the Board of Public Charities). The balance of the increase is explained by the increased cost of hospital maintenance.

QUESTION 3.

Appropriations to homes, asylums, etc., for 1917-1919 appear by Smull's Handbook to have been $797,000, while a statement furnished to this Commission by the Board of Public Charities shows that the appropriations for 1919-1921 were $1,202,289. To what is this large increase due?

Smull classifies as "educational" a number of institutions which the Board of Public Charities classifies as "homes, asylums, etc." The records of the Board of Public Charities show appropriations as follows:

	Appropriations by 1917 General Assembly	Appropriations by 1919 General Assembly
Homes, Asylums, etc.,	$894,520	$1,202,289 20

The actual increase in appropriations to "homes, asylums, etc," was therefore $307,769.20. Of this sum $9,500 is accounted for by appropriations to institutions which did nto receive State aid in 1917. The balance of the increase is explained by the increased cost of maintenance.

QUESTION 4.

Upon what basis is the number of free hospital days reported by any institution computed?

A "hospital day" is one day's maintenance of one patient. Free hospital days are hospital days for which the institution receives no pay from any source whatever other than the State. To find the total number of hospital days, add together the number of days of treatment given to all patients. Then divide the total cost of maintenance by the number of hospital days, and the result will be the daily cost of maintenance for each patient.

Next, it is necessary to find how many of the hospital days have been paid for by charges made to patients, or by gifts and legacies, and how many are free hospital days, i. e. hospital days for which the institution receives no pay except from the State. To arrive at these figures, substract from the total income the amount received from the State, leaving a remainder which represents all income received from patients, gifts and legacies. Divide this remainder by the daily cost of maintenance for each patient and the result will represent the number of hospital days paid for by patients, gifts and legacies. Subtract this last figure from the total number of hospital days and the remainder will represent the number of "free hospital days."

In other words, the number of free hospital days shows the amount of service which will plunge the institution into a deficit unless the State helps to make up that deficit by an appropriation.

This method of computing the number of free hospital days can better be understood by a brief illustration. The X Hospital has 100 patients, each of whom receives treatment for 200 days. This gives 20,000 hospital days. The total cost of maintenance is $40,000, and therefore the daily cost of maintenance for each patient is $2.00. The hospitals' total income is $30,000, of which $10,000 came from the State. This leaves an income of $20,000 derived from patients, gifts and legacies. Dividing this $20,000 by $2.00, which is the daily cost of maintenance for each patient, there is obtained a result of 10,000 representing the number of hospital days paid for by patients and by contributions. Subtract this 10,000 from the total number of hospital days, or 20,000, and the remainder of 10,000 represents the number of free hospital days. In other words, if the State wishes to save the institution from a deficit it will have to appropriate enough money to pay for 10,000 free hospital days at $2.00 a day.

QUESTION 5.

What control, if any, does the State exercise over the admission of patients into hospitals and their treatment without pay or with only part pay by the patient or his friends?

If a hospital does not satisfy the Board of Public Charities with respect to the admission and treatment of free patients, the Board either refuses to recommend an appropriation for that institution at the next legislative session, or asks the Auditor-General to withhold its next quarterly instalment of appropriation. This always results in an adjustment satisfactory to the Board. Beyond this, the State exercises no direct control over the admission and treatment of free patients.

QUESTION 6.

(a) In the reports of institutions as to income in what category or column of the statistical tables would be placed payments by employers for th treatment of employes?

(b) In those instances, if any, where weekly contributions are made by the employer for medical care of employes in case of injury or sickness, in what category or column of the statistical table would these payments appear?

Such payments are accounted for as part of the hospital's receipts from patients, and are divided among such items of income as "board and treatment," "ambulance," etc.

QUESTION 7.

Where in the hospital reports to the State Board are payments by employers or insurance companies under the Workman's Compensation Law reported?

Some hospitals return these items under a separate heading as amounts on account of Workman's Compensation Payments. Other hospitals return them as parts of their general totals of amounts received from patients.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 20

LOCAL GOVERNMENT—CONSTITUTIONAL HOME RULE PROVISIONS OF OTHER STATES.

Harrisburg, Pa. Jan. 19, 1920.

Mr. Charles H. English,
Chairman of Special Committee on Local Government.

Dear Sir: I understand you desire a Memorandum on Constitutional Home Rule Provisions of other States.

Home-rule provisions in the several state consitutions apply only to cities, towns and villages, except in California, where they apply also to counties (Art. XI, § 7-½). I have used the word "cities" in this memorandum to cover cities, towns and villages and the word "municipalities" to cover these and counties as well. Home-rule provisions are of three kinds: (1) Welfare, including matters of public safety, health and comfort: (2) Finance, including matters of taxation and indebtedness: and (3) Organization, including, matters having to do with the framework or machinery of municipal government.

(1) WELFARE PROVISIONS.

There are three possible ways in which a Constitution may deal with the home-rule problem as applied to matters of welfare: (a) It may give to the legislature entire control, with the right to delegate some of its powers to the municipalities; (b) It may give to the municipalities control unless and until the Legislature acts; or (c) It may vest the entire control exclusively in the municipalities.

(a) In states such as Pennsylvania which have no constitutional home-rule provisions the Legislatures delegate to the municipalities certain powers of control in welfare matters, reserving always the right to withdraw these powers at will.

(b) In most of the states which have constitutional home-rule provisions, there is no express reference to welfare matters. These are probably included in the power to "frame a charter," and can be exercised unless and until they are superseded by an act of the Legislature.

(c) In Colorado the constitution gives to each city "full right of self-government in both local and municipal matters" and expressly provides that municipal charters and ordinances shall supersede acts of the Legislature as to "municipal and local matters."

The Colorado system invites continual dispute and litigation as to what is or is not a local and municipal matter. Such matters as the regulation of traffic, the laying out of parks and the construction of streets and sewers are universally regarded as local matters. On the other hand the prevention of contagious diseases and the administration of justice are matters of general or state concern. Between these two lies a debatable field of large extent. For example, limitations with respect to the wages and hours of work of industrial employes may be regarded as a matter of local concern; but if the effect of such regulations upon the welfare of the whole body of citizens be considered, the matter may be regarded as one of general or state concern.

If an express constitutional provision be desired granting to municipalities the power of control in welfare matters, the more usual and moderate provision is less apt to cause confusion. For example, Article 18, Section 3, of the Constitution of Ohio provides that cities "shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

(2) FINANCE PROVISIONS.

As in matters of welfare so in those of finance there are three ways in which a constitution may deal with the home-rule problem: (a) By giving to the Legislature control with power of delegation; (b) By giving to the municipalities control subject to the superior power of the Legislature; and (c) By vesting exclusive control in the municipalities.

(a) The Legislatures of the several states commonly allow to municipalities a certain latitude in selecting the subjects and purposes of taxation, in fixing the rates of taxation, and in fixing the amounts and purposes of municipal indebtedness. The constitutional provisions in these matters are usually limitations and not home-rule provisions. That is, they restrict the municipalities to certain kinds and rates of taxation and to loans in certain amounts and for certain purposes; but they do not free the municipalities from legislative control in these matters. This is the situation in Pennsylvania.

(b) The intimate relation between State and municipal finances suggests a danger in allowing to much freedom in this matter to local governments. The result might be the great confusion of the tax-paying public and an unfair distribution of the burden of taxation. Accordingly, most of the states with constitutional home-rule provisions simply permit municipalities to frame their own charters, subject to the paramount provisions of general state laws. If therefore the power to "frame a charter" includes the power of control in financial matters it follows that municipalities can decide these matters for themselves, but that the legislature can always step in with a general law and change a local policy of taxation or of borrowing which is obnoxious to the general policy of the state.

(c) The Colorado Constitution gives to cities the exclusive power to legislate with respect to the municipal debt and municipal taxation. In the matter of financial home-rule this goes further than other states. But even in Colorado the taxing and borrowing powers of all municipalities are expressly limited by the Constitution itself.

(3) ORGANIZATION.

There are three ways in which a constitution may deal with the home-rule problem in matters of organization: (a) It may leave entire control to the Legislature, with or without the right to delegate any of its powers to the municipalities; (b) It may vest control in the municipalities subject to the superior power of the Legislture; and (c) It may vest control exclusively in the municipalities.

(a) In most states the Legislatures are given a free hand in the creation of the framework of municipal government, especially for cities. Within certain very broad limits they are able to prescribe any form of local government which may commend itself to them, whether it calls for a mayor and councils, for a commission, for a city manager, or for any other system. For example, in Pennsylvania the General Assembly may change the charters of cities at will so long as special legislation is avoided. All cities of the third class were once governed by a mayor and a bi-cameral council; by the Act of 1911 there were substituted a mayor and four councilmen. The recent change in the charter of Philadelphia is another illustration of the power of the General Assembly in this respect.

(b) Where the Constitution gives to muncipalities the right to frame their own charters subject only to the controlling power of the Legislature, provisions are inserted to cover the manner in which the framing of the charter and its submission to the people shall be effected. In some states there are also provisions restricting the choice as to form. For instance, in Missouri a mayor and a bi-cameral council are required by the Constitution.

(c) It is unusual to allow cities to frame their own charters without control by the Legislature. This is provided for by the Constitution of Colorado (Article 20, Sec. 6). Each city and town with a population of 2000 is given the power to frame its own charter and such a charter supersedes "any law of the State in conflict therewith."

In Chicago the matter of home-rule is now receiving special attention on account of the present Illinois Constitutional Convention. A Special Committee of the City Council assisted by Professor Ernest Freund of The University of Chicago has recently submitted a most valuable preliminary report on the subject. A copy of this report is on file in the Secretary's office. I have made liberal use of it in preparing this memorandum.

The exact constitutional provisions dealing with home-rule may be found in the Index Digest of State Constitutions under the title "Municipal Home Rule," pages 1007 to 1030, and in "The State Constitutions" by Kettleborough, both of which are on file in the Secretary's office.

Very truly yours,

WM. DRAPER LEWIS.
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 21

LOCAL GOVERNMENT—DISCUSSION OF CONSTITUTIONAL PROVISIONS AFFECTING MUNICIPALITIES—"HOME RULE."

Harrisburg, Pa., Jan. 20, 1920.

Mr. C. H. English,
Chairman, Special Committee on Local Government.

Dear Sir:

I understand your Committee desires a Brief on Constitutional Provisions Respecting Municipalities, with Special Reference to the Way in Which such Provisions May Secure to the People of a Locality the Right of "Home Rule."

The subject of the inquiry of your Committee may be discussed under the following heads:

A. Power to Create Municipalities.

B. Power to Select Municipal Officers.

C. Power to Control Qualifications, Salaries and Duties of Municipal Officers.

D. Power to determine the organization of Municipalities.

E. Power to Determine the Extent of Municipal Powers.

I shall discuss the subject in the order indicated by this division.

(A) POWER TO CREATE MUNICIPALITIES.

In Article III, Section 7, the General Assembly is prohibited from erecting new counties, townships or boroughs, or from changing their lines by any local or special law. Article XIII, Section 1, prevents the establishment of a new county or the reduction of an existing county to less than four hundred square miles or twenty thousand inhabitants; or dividing an existing county so that the new county line will pass within ten miles of the county seat of the county to be divided.

Article XV, Section 1, provides that any town or borough having a population of at least ten thousand may receive a charter as a city whenever a majority of its electors shall vote at any general election in favor of the same. As has been suggested in Brief No. 18, this provision probably does not prevent the General Assembly from permitting boroughs and townships having a less population to become cities. I do not know of any case deciding whether this section prevents the General Assembly from forcing on the people of a locality a city charter without the consent of a majority of the electors.

In Brief No. 18, I have pointed out that the right of the General Assembly to create other forms of municipalities is an unsettled and doubtful question. It is probable but not absolutely certain that the legislature can create a city covering all or a part of several counties. It is certain that the districts surrounding Philadelphia cannot become a part of the city without legislative action; but it is not certain whether or not they can be included in a greater Philadelphia without the consent of a majority of the electors. It is uncertain whether the General Assembly, with or without the consent of the inhabitants, can create a new kind of incorporated district covering all or part of the territory of one or more counties, townships, boroughs and cities.

It is clear that the Constitution should leave no room for doubt upon questions of such fundamental importance as these. To do this it is necessary to come to conclusions on questions of fundamental policy.

It may serve to make clear the nature and importance of these questions if I here incorporate a series of possible sections which would embody the express provisions of our present Constitution and at the same time give definite answers to those fundamental questions above indicated which the present Constitution leaves in doubt.

Section *a*.

The municipalities of this Commonwealth are counties, townships, cities boroughs, school dis'ricts, and such other incorporated dis'ricts as the General Assembly shall by law create.

Section *b*.

The General Assembly may provide, but only by general law, for 'he creation, division and change of boundaries of any class of municipalities.

Section *c*.

No new county shall be established which shall reduce any county to less 'han four hundred square miles, or to less than twenty 'housand inhabitants, nor shall any county be formed of less area or containing a less popula'ion, nor shall any line thereof pass within ten miles of the county seat of any coun'y proposed to be divided.

Section d.

No city or borough shall be created, nor shall the boundaries thereof be changed except by the consent of a majority of such electors resident within the proposed boundaries as shall vote on the proposed change at an election which shall be held as may be provided by law; nor shall any change in boundaries be made which shall place outside the existing limits of a city or borough or any part thereof without the consent of a majority of such electors resident within the proposed excluded area as shall vote thereon in like manner.

Section c.

The General Assembly may provide but only by general law for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided that no such incorporated district shall be created or its boundaries extended or its powers increased, except by the consent of a majority of such electors resident within the territory of all existing municipalities in whole or in part included in the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law.

The last section suggested would permit the creation of an incorporated district for the development and care of a park system existing or to be created, embracing the territory now included in Philadelphia and a whole or a part of the surrounding country, which incorporated district would have concurrent or exclusive jurisdiction over parks, provided a majority of the electors resident within all the municipalities affected were favorable to its creation. It would also permit the creation under conditions of an incorporated district to conserve and develop the water power of a river, or other natural resource.

(B) POWER TO SELECT MUNICIPAL OFFICERS.

Article XIV, Section 2, provides that "county officers shall be elected at the municipal elections." This section insures to the people of a county the right to select those officers of county government provided for in the Constitution by Article XIV, Section 1.

The General Assembly can establish county officers other than those expressly provided for in Section 1 of Article XIV. If county officers not expressly provided for in the Constitution are created, the General Assembly cannot provide that they shall be selected in any other way than at a municipal election.

The provisions of Article XIV, Section 1, are the only provisions in the Constitution which protect the right of the people of a locality to select officers of local government. Under the present Constitution the Legislature may provide for the appointment by the Governor of all the officers of townships, boroughs or cities. If it is desired to secure to the people of a locality the right to select the officers of all local governments, it could be done by some such provision as the following:

> *The officers of all municipalities shall be elected at a municipal election or appointed by an officer or agency of the municipality as may be provided by law.*

Such a section would properly be part of a new article dealing with all local governments under some such title as "Municipalities."

(C) POWER TO DETERMINE QUALIFICATIONS, SALARIES AND DUTIES OF MUNICIPAL OFFICERS.

The present Constitution in Article XIV limits the power of the General Assembly as well as the County by providing: (1) That a person appointed to a county office shall have been a citizen and an inhabitant of a county for at least one year. (Section 3); (2) That prothonotaries, clerks of courts, recorders of deeds, registers of wills, county surveyors and sheriffs shall keep their offices in the County town. (Section 4); That the compensation of county officers shall be paid by salaries only. (Section 5 as already modified by the Commission); and finally, That the General Assembly shall provide for the strict accountability of all county, township and borough offices for all monies collected by them.

It may with some force be contended that there is no apparent reason why any recrudescence of the fee system, as applied to officers in municipalities other than counties, should not be prevented by extending the prohibition in Section 5 to all municipal officers. In the same manner there may be force in the suggestion that Section 6 should provide that all municipal offices, and not only county, township and borough offices should be strictly accountable for all monies collected by them. But it can hardly be contended that any of the sections to which I have just referred trespass on any fundamental home rule principle.

The fundamental question, however, is whether the Constitution should vest in the General Assembly, as our present Constitution does, the right (subject to the constitutional requirements just quoted) to determine the qualifications, salaries and duties of all municipal officers, or whether the people of the locality should have a constitutional right to a concurrent or sole voice in the determination of such questions. It seems clear that the General Assembly should have the right to impose on all or at least on some municipal officers, as on county officers, state duties, such as the collection of state taxes. On the other hand, whether the General Assembly should or should not have the power to dictate the local duties of municipal officers is a matter which I shall refer to under the next head which deals with the organization of municipalities.

(D) POWER TO DETERMINE THE ORGANIZATION OF MUNICIPALITIES.

The present Constitution vests in the General Assembly the exclusive power to determine the organization of local government, except that Article XIV, Section 1, provides for certain county officers and the names of these designated county officers indicate in a general way their duties. If it is desired to follow the example of several of the other states (see Brief No. 20, "Constitutional Home Rule Provisions of Other States") there are at least three different ways by which the desired end may be reached:

1. By providing that any change in the organization of a municipality made by the General Assembly shall not become operative until the change is accepted by the electors resident in the territory affected.

2. By providing that a change may (or may only) be made in the organization of a municipality by a local ordinance with a provision (if desired) requiring such ordinance to be ratified by the electors.

3. By providing that a change may (or may only) be made in the organization of a municipality in the initiation by petition of a designated fraction of the electors ratified at a municipal election.

It will be noticed that these three possible methods of securing "home rule" to localities are not mutually exclusive. For instance, all three methods could be combined in a section worded as follows:

Changes in the organization of a municipality shall be made only by

(a) An Act of the General Assembly ratified by a majority of the electors of the municipality voting thereon at a municipal or special election designated in the Act: or

(b) An ordinance of the municipality ratified by a majority of the electors of the municipality voting thereon at a municipal election; or

(c) By a petition setting forth the proposed change signed by ten per centum of the electors of the municipality presented to the ordinance-making body of the municipality and ratified by a majority of the electors voting thereon at a municipal election.

The section as drafted would apply to all municipalities. For instance, if inserted in the present constitution it would apply to counties and townships as well as to cities and boroughs. It is, of course, a debatable question whether this result is desirable. All three methods could be easily applied to cities and perhaps to boroughs, but the methods indicated under clauses b, and c might be regarded as ill suited to counties or townships.

(E) POWER TO DETERMINE THE EXTENT OF MUNICIPAL POWERS.

The powers of municipalities may be classified under welfare powers and financial powers.

1. WELFARE POWERS.

Under the present Constitution there is no limitation on the power of the General Assembly to vest or take away any such power from any municipality, except that the legislation must not be local or special legislation, as those terms are interpreted by the Supreme Court. Whether the General Assembly has power to vest in all cities or in all municipalities the power to enact legislation relating to wills, or contracts, or other matters of civil law may be an interesting academic question. But it is not one likely to arise, as matters affecting the civil rights and obligations of persons and property are universally admitted to be improper subjects of local regulation.

I find that the demand for "home rule" often takes the form of a demand that the constitution should vest power over matters of local concern in the municipalities. This demand assumes that it is possible to draw a line separating matters of local from matters of general or state-wide interest. The assumption is, I believe, erroneous. There are, indeed, subjects which may at any one time be regarded as in their main features purely local, but even in these cases a power of control vested by constitutional mandate might vest in the municipality control over a matter of general interest. Thus the operation of intra-urban utilities, as gas and electric works, would be generally conceded to be local. But as Mr. Ernst Freund, in his interesting and instructive report to the Illinois Constitutional Convention on "Propositions Affecting the City of Chicago," asks, what about "the terms and duration of franchises, the hours of labor for employees, segregation of rates, etc?" The result of what consideration I have been able to give to the matter is, therefore,

that it is not practical to vest exclusively either in general terms or in terms referring to specific subjects, welfare powers in counties, townships, boroughs, cities or other municipalities.

At present the presumption of law is that a city or other municipality has only those powers which are granted to it expressly by statute or by necessary implication. (Lesley vs. Kite, 192 Pa. 268,-274.) It is possible that it may be desirable to change this presumption by some such provision as the following:

> Subject to the provisions of the constitution and of general law, all municipalities shall have powers of local government and corporate action adequate for all municipal purposes, and no such power shall be presumed to be denied by reason of not being specified in any existing law.

It may be that the reasons which would prompt the adoption of such a provision as applied to cities or to cities and boroughs would not be regarded as applying to counties and townships.

POSSIBLE LIMITATIONS OF POWERS OF STATE COMMISSIONS.

There is one direction in which it may be practical to protect at least cities of some considerable size from state interference by vesting in such cities a definite power. Under our present Constitution the State may enact a general law, entrust its administration to a commission, and give that commission power to make orders of limited application. The Public Service Commission is an illustration of this. Under existing law it is its duty to regulate the rates and services of all public utilities in the State. Its orders are orders to designated public service companies, and are therefore often limited in their application to services performed in a definite municipality. Furthermore, under existing law all contracts between a municipal and a public service company are subject to the Commission's approval or disapproval. The question whether municipalities or some of them should or should not have constitu-

tional protection from all or some State administrative orders of a local character, is one of the fundamental questions of far-reaching practical importance which must be determined in any constitutional revision.

If it is desired to limit the present unlimited power of the General Assembly to create Commissions, who in administering general laws, make orders of limited and local application, it may be done in one of several ways, depending on the degree of the constitutional limitation desired. Of course it is theoretically possible to insert a sweeping provision to the effect that the General Assembly shall not vest in any administrative agency the right to make orders limited in application to one locality or to one municipality. But such a provision would prevent any effective regulation of any public utility, for even those public service companies engaged in supplying services affecting all parts of the State, such as our railroads, must, to be effectively regulated, be subjected to orders of limited and local application made by a commission of state-wide jurisdiction.

What may be regarded as a debatable constitutional provision would be one which provided that:

> *Every municipality shall have exclusive power, either by the exercise of its legislative authority or by contract, to regulate the rate to be charged and the service to be rendered by public utilities wher such service is given within the territory of such municipality and does not consist of the transportation of a person or his property between a point within and a point without the municipality.*

As the demand for "home rule" comes from the cities of the Commonwealth, at least so far as that demand is voiced by an objection to the existing powers of the Public Service Commission, it is probable that the form in which the foregoing provision would present a debatable issue, would be one which would limit its application to "All cities" or to "All cities of over 50,000 population as ascertained by the most recent Federal or State census."

The argument in favor of the provision thus modified is that it insures to the people living in a city control over a matter of purely local concern, which is vital, because those who dwell in cities are dependent on the service of public utilities for many of the necessities of urban life. The argument against the limitation is that it subjects a public service company operating public service facilities in different places to a dual or to a many-headed system of regulation which would be difficult to work in practice, and that the inevitable variations between the regulations of different cities, and of the State Commission would tend to impair the stability of all companies engaged in public service in the State, and consequently their ability to obtain sufficient capital to perform efficient service to the public.

Should the weight of the argument against the above provision appear sufficiently strong to prevent the priciple embodied in this method of dealing with the subject being incorporated as a constitutional protection to our cities, there is one far less wide provision which is debatable. Our cities are more and more in need of facilities which are beyond the ability of private capital to furnish, and which the cities are therefore obliged to build out of their own funds. Many take the position that when a city, as the city of Philadelphia, expends many millions in creating a public service facility, such as a complete system of high speed city transit lines, the operation of that facility, whether by the City itself or under a contract with an operating company, should not be subject to regulation as to service, or rates, by a State commission. If it is desired to embody this demand in the constitution, some such provision as the following would serve the purpose:

> *A municipality shall have exclusive power to regulate the rates to be charged and the services to be rendered, through the operation of any public service facility built or purchased by it, so long as the title to such facility is retained by the municipality.*

It will be noted that the wording of the above provision retains in the General Assembly the power which it has exercised in the Public Service Act to prevent a municipality from creating a public service facility until it has obtained from the Commission a certificate of public convenience. If it is desired to give to municipalities the constitutional right to build public service facilities free from State interference this right should be secured in another section.

2. FINANCIAL POWERS.

Financial powers may be classed under two heads: (a) The Taxing Power and (b) The Borrowing Power.

(a) The Taxing Power.

Under the present Constitution the General Assembly is the sole judge of the extent of the taxing power which shall be vested in a local government. In exercising a power of taxation vested in it by statute, a municipality is subject to limitations as to uniformity imposed on all exercse of the taxing power in the Commonwealth, by Section 1 of Article IX, namely that "All taxess hall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, etc."

It is, of course, conceivable that a constitution might vest in one or more or all classes of municipalities the right or the exclusive right to levy and collect taxes on certan classes of subjects. It would seem fundamentally unsound to vest in a municipality the constitutional power to determine for itself the subjects of taxation. Revenue producing capacity being limited there must be co-ordination between local and state taxes, and this co-ordination can only be brought about by vesting the sole determination of the matter in the State government, or by separating the subjects of State and local taxation respectively in the constitution. To do this latter, however, would tend to fix on the people a definite system of taxation, and would limit the power of the State in matters vital to its very being, which might prove disastrous in times of national peril.

Again the Constitution might secure to all municipalities, or municipalities of a definite class, the right to fix a rate of taxation equal to a definite fraction of the assessed value of the taxable property, but such a provision would again hamper the State in this vital matter. Such ap rovision might, however, tend to limit the power of municipalities, because while under the present Constitution the General Assembly has the power to limit the rate of taxation imposed by a municipality, it has, in practice, left the rate to be determined by local ordinance, and there is no present reason to believe that it will not continue to do so. My general conclusion is, therefore, that any constitutional protection of the municipal taxing power is not a question for serious debate.

ASSESSMENTS FOR BENEFITS.

There is, however, in connection with municipal taxing power, one subject that is debatable.

Under the present Constitution the General Assembly can give to a city the power to assess the benefit of a street or sewer against the abutting owners only. (Morwood Ave. 159 Pa. 20). I doubt very much whether a city could be given the right to assess any benefits for the construction of such an improvement as a trolley line. This is a serious handicap on cities in the development of neiessary public improvements.

In Philadelphia the building and operation of the proposed high speed urban transportation lines will add many millions to the value of suburban real estate. I append hereto, marked "Exhibit A," a letter received from the present Director of City Transit, Mr. William S. Twining, in which he expresses it as his opinion that the money to build these needed facilities cannot be obtained unless part of it be obtained by assessing benefits against all property which will be specially benefited by the proposed lines.

I understand that the best thought and the most successful practice in the matter of assessment of benefits for public improvements is to make the assessment payable over several years rather than at one time. If it is desired to give to all municipalities the right to assess benefits for improvements made by municipal authorities, some such provision as the following would serve the purpose:

> *All municipalities (or all of a designated class or classes of municipalities as desired) shall have the power by ordinance to assess the cost of a municipal improvement against property specially benefited thereby, irrespective of the relative locations of the said improvement and property; provided that such assessment, whether made payable in one or several installments shall not exceed the increase in saleable value due to such improvement. The Method of ascertaining such assessment my be regulated by general law.*

(b) THE BORROWIN POWER

The borrowing power of municipalities is dealt with in the present Constitution in Article IX, Sections 8, 10 and 15. These sections impose limitations on the amount of indebtedness and on the method of exercising the power, and prescribe provisions for repayment.

LIMITATIONS ON THE AMOUNT OF INDEBTEDNESS THAT MAY BE INCURRED.

As originally promulgated the debt of all municipalities was limited to seven per centum upon the assessed value of its taxable property. At present this limit is ten per centum. (Sections 8 and 15 of Article IX.) In ascertaining the amount of existing indebtedness for the purpose of calculating the borrowing power at any time, it is permissible to disregard under certain conditions any indebtedness incurred in the past for public improvements which are yielding an annual current net revenue. The conditions under which such indebtedness can be disregarded in the calculation are not the same for the City of Philadelphia as for other municipalities.

In municipalities other than Philadelphia, in order to disregard a prior indebtedness in calculating the "existing indebtedness" the prior indebtedness must have been incurred "for the construction or acquisition of water works, subways, underground railways or street railways, or the appurtenances thereof;" while in Philadelphia the prior indebtedness may have been incurred for "any public improvement." Again, in municipalities other than Philadelphia, such indebtedness must have been incurred for the acquisition of properties which for a period of five years, either before or after their acquisition, have been yielding a net revenue sufficient to pay the interest and sinking fund charges on such indebtedness; while in Philadelphia the improvement for which such indebtedness is incurred must have been yielding an annual current net revenue to the city for the year immediately preceding the time the calculation is made. Furthermore, in any municipality, except Philadelphia, no portion of the indebtedness incurred for the acquisition of the properties can be deducted from the present indebtedness of the municipality for the purpose of calculating the existing borrowing capacity unless the annual net revenue has been sufficient to pay all the interest and sinking fund charges on the indebtedness incurred for the improvemet; while in Philadelphia, if the operation of the improvement has during the preceding year yielded to the City any current net revenue, there may be deducted from the total indebtedness of the City for the purpose of calculating its borrowing capacity, a capital sum ascertained by determining the amount which will yield at the average rate of interest and sinking fund charges payable by the City, the annual current net revenue which the City is receiving from the operation of the improvement.

Lastly, in all other municipalities except Phialdelphia, if an obligation has been issued to pay for the acquisition of water-works or for the transit facilities above described, the obligation can be deducted from the indebtedness of the municipality if it is secured

by liens on the properties acquired and imposes no municipal liability whatever.

These confused and curious differences between the methods of calculating the borrowing capacity of Philadelphia, and of other municipalities, when part of the indebtedness already incurred is invested in improvements yielding a net revenue, are due to the accidents and varying necessities of Philadelphia and of other municipalities when they have proposed and secured the various amendments adopted during the last eight years. Whatever opinions may be entertained on the wisdom of the limitations in the present Constitution on the borrowing power of municipalities, the following propositions would appear to be above serious dispute:

First: There is no reason why other municipalities have, but Philadelphia has not, the right when it borrows money to acquire a street railway, to do so without intrenching on its borrowing capacity for other purposes, provided that for five years the annual net revenue of the street railway is an amount equal to or greater than the interest and sinking fund charges on the amount borrowed to make the purchase.

Second: There is no reason why Philadelphia has the right to deduct from its indebtedness, in calculating its borrowing capacity a debt incurred to build a public improvement, if after a year of operation such improvement yields a current net revenue; while Pittsburgh and other municipalities have to wait until the improvement has been operated for a period of five consecutive years and has yielded a current net revenue equal to the interest and sinking fund charges on the indebtedness incurred in creating it.

Third: There is no reason why Philadelphia should have the right to deduct, in calculating its existing indebtedness, a net revenue derived from any public improvement, while all

municipalities can not make such deductions unless the improvements from which the net revenue is derived are waterworks or surface or underground railways.

Fourth: There is no reason why all other municipalities should have and Philadelphia should not have the right to incur indebtedness for certain public improvements, if secured by liens upon the respective properties and imposing no municipal liability, without affecting its borrowing capacity for other purposes.

Methods of Exercising the Power to Incur Indebtedness.

If there is sufficient borrowing capacity under the limitations of the Constitution any municipality may by ordinance increase its indebtedness at any one time to an amount not over two per cent. of the assessed value of its taxable property; but if the increase is more than two per cent. the question of the increase must be submitted to the electors for their approval. An affirmative majority of those voting on the question is all that is required unless the existing indebtedness at the time is more than seven per cent. of the assessed value of the taxable property; in that case, in all municipalities except Philadelphia, the approval of three-fifths of the electors voting at the public election must be secured. Again the reason for this difference between Philadelphia and other municipalities, at least those of considerable size, is not apparent.

Sinking Fund Provisions.

In the present Constitution as originally adopted, all municipalities incurring any indebtedness were obliged to provide for the collection of a tax sufficient to pay the interest and also the principal within thirty years. This thirty year limit still applies to all municipalities except Philadelphia. In the amendment of 1918, Philadelphia was given the right to issue obligations maturing not later than fifty years from the date of issue.

Issuing Obligations for the Purpose of Paying Interest on Indebtedness.

Where municipal obligations are issued for the purpose of providing funds to pay for waterworks, subways, underground railways or street railways, and in Philadelphia for any other public works from which income or revenue is to be derived by the City, or for the reclamation of land, or the construction of wharves or docks, though no revenue is to be derived therefrom, the obligations may be issued in an amount sufficient to pay the interest and sinking fund charges accruing, and which may accrue thereon throughout the period of construction and until the expiration of one year after the completion of the work. The wisdom of this policy is, of course, a debatable question, but there is again no apparent justification for the difference between Philadelphia and other cities and perhaps no good reason for the difference between Philadelphia and other municipalities not cities.

The most ardent advocate of "home rule" for municipalities can hardly contend that the Constitution should vest in municipalities an unlimited borrowing power. Money borrowed must be repaid or the good name, not only of the municipality, but of the entire State, and the confidence which investors have in other municipal and even in State securities are seriously affected. A public body to repay money borrowed must levy taxes, and every municipal tax affects the ability of the State to secure money by taxation for State purposes. The debatable question, therefore, is not whether there should be in the State Constitution limitations on the taxing power of municipalities, but the extent of the limitations and whether the General Assembly shall have the right to still further limit the power.

If it is desired to preserve the essential features of existing limitations on the borrowing power of municipalities and at the same time to do away with accidental anomalies, the result of haphazard amend-

ments adopted to meet pressing local situations, the purpose can be carried out by substituting for Section 8, 10 and 15 of Article IX, some such sections as the following:

A municipality shall have the power to incur indebtedness to an amount not exceeding ten per centum upon the assessed value of the taxable property thereon, but the General Assembly may by a law applicable to all municipalities of the same class reduce or otherwise further limit such power.

A municipal ordinance incurrig a new debt to an amoun' in excess of two per centum upon the assessed value of the taxable property within the municipali'y, shall be submitted 'o the electors at a public elec'ion in such manner as shall be provided by law, and shall become valid when approved by a majority of the electors voting thereon. An ordinance of a county, township, or borough, having a debt in excess of seven per centum upon the taxable proper'y therein, incurring a new debt shall become valid when approved in like manner by three-fifths of the elec'ors voting thereon.

In calculating the indebtedness of a municipality for the purpose of ascertaining its borrowing capaci'y, there shall be deducted from the indebtedness and disregarded in the calculation.

(a) The amount of any indebtedness incurred for public improvements secured by liens on the properties acquired and imposing no municipal obligation whatever.

(b) Any debt incurred to acquire public improvements, provided the ne' income derived from the property acquired for the period of five years immediately preceding its acquisition, shall have been sufficient 'o have paid the in'erest and sinking fund charges for five years on such indebtedness.

(c) An amount equal to that capital sum which will yield at the current rate of interest and sinking fund charges an annual revenue equal to the ne' revenue received by the municipali'y from any public improvement during the last preced-

ing fiscal year, provided the debt incurred for the acquisition of the property has not been deducted under the provisions of clause (b) hereof.

A municipality shall not incur any indebtedness to run for more than fifty years and shall at or before the time of incurring such indebtedness provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof at maturity and shall create a sinking fund which shall be inviolably pledged for the payment thereof.

No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipality.

LOANS OF CREDIT BY MUNICIPALITIES.

Closely linked with the subject of the borrowing power is the object dealt with in Article IX, Section 7. This article provides that: "The General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual."

The soundness of the general principle underlying this section is beyond question, but the Supreme Court of Ohio passing on a section of the Constitution of that State of almost identical wording has recently held that it is a loan of municipal credit for a city to lease a transit facility built by it, where the terms of the lease provide that the rent shall be a share in the surplus due to the operation of the leased facility and other facilities belonging to the operating company after a dividend has been paid to the stockholders of that company.

The language of the decision goes so far as to apparently hold that the section forbids the lease of a facility built by a city on any other

terms than a fixed rental and perhaps a rental equal to the interest and sinking fund charges on the debt incurred to create it. Now the main reason for a city building such facilities as transit facilities is that the people demand facilities which it is not practical to operate so as to yield a net revenue equal to the interest and sinking fund charges on the indebtedness incurred to build them. Indeed, it may often not be possible to operate the facility so as to produce any net revenue. Without discussing the soundness of the construction put upon the section by the Supreme Court of Ohio, it is essential to a solution of the transit problem in Philadelphia and perhaps in other large cities of the Commonwealth that the possibility of such a decision be guarded against. This could be accomplished and the fundamental principle in section 7 extended to all municipalities by substituting for the section as now worded the following:

> *The General Assembly shall not authorize any municipality to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to any corporation, association, institution or individual; but nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms.*

I attach hereto the letter of Director Twining above referred to.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Dr. William Draper Lewis, Secretary,
Constitutional Revision Committee,

Harrisburg, Penna.

My Dear Dr. Lewis:

As you are of course aware, one of the principal problems in connection with the development of Philadelphia is that of rapid transit, and four years further study of that problem has convinced

me that the recommendation I made in 1916 contains the only principle upon which the City can secure its Rapid Transit System on a satisfactory financial basis.

Rapid transit lines are primarily for the purpose of developing the outlying and suburban sections of large cities, and the establishment of the principle of assessing the property benefited for at least a portion of its cost seems to be absolutely necessary in order to keep the fares reasonable and to control unwarranted building of lines. Lines should only be built on a petition representing two-thirds of the property to be assessed. The principle of district assessment for local benefits has been recognized by the State to a very limited degree, but it would seem to me that the new Constitution, upon which you are at work, should make a clear and distinct provision that the cost of transit facilities to be owned by the City should preferably be assessed against the entire property benefited by their construction. A rapid transit line will not serve direct an area much exceeding a mile in width, but should the City supplement this line with surface feeder lines, the entire district can be made tributary and subject to assessment in some degree. Of course, the assessment should be more or less proportional to the directness of the benefit, which is equivalent to saying that it should be more or less proportional to the accessibility of the service to the property.

There can be no question that the only way possible to permanently maintain a 5c fare is by eliminating in this way all or a greater part of the capital charges on these lines. That the 5c fare is of great value is recognized by the Real Estate Board of Philadelphia, which, in one of its publications, has recently published an axiom to the effect that:

> "A building lot situated within the 5c fare zone is intrinsically worth a thousand dollars more than the same size lot in a 10c zone."

At the present time, when there is a strong tendency to encroach upon the 5c zone and reduce its size, the suburbs can only be developed by penalizing suburban residents both in money and time; that is, they will be required to pay both a higher fare and to give up more time for the journey. Time can be reduced by means of rapid transit railways, and the 5c zone can be extended very greatly in area by building these lines out of direct assessment on the property benefited.

If the statement made by the Real Estate Board be true, it is readily seen that the valuation of one thousand dollars per lot will of itself offset the cost of an elevated line, as the cost of these lines in a suburban district should not exceed two hundred dollars ($200) per running foot. Therefore, it is readily seen that this cost represents but a small percentage of the advantages gained by the real estate owners in providing their properties with proper transit service.

As you are aware, the City Solicitor ruled under date of March 30, 1916, as follows:

> "No Act of the Legislature, having in view the assessment in any other manner of all or a part of their cost upon individual property owners, would be sustained as constitutional. It follows that the only method in which this could be done would be by the slow process of constitutional amendment.

It is in the face of this opinion that I strongly urge that provision be made in the Constitution for Constitutional authority to carry out the principle and method of transit development embodied in the following proposed act:

> "In all cases where an administrative board is authorized to determine that an improvement is to be made, the said board shall also determine what proportion of the cost and expense of the said improvement shall be assessed upon the property which shall be deemed to be benefited thereby and what proportion of the cost and expenses thereof shall be borne and paid by the City.

The said board may also determine in each case how much of the cost and expense of an improvement shall be assessed upon a restricted area of peculiar benefit and how much, if any, shall be assessed upon a larger area of indirect benefit. The said board may also determine whether the entire assessment shall become due upon confirmation of the same, or whether it be paid in annual installments, and it shall also determine the number of such annual installments in which such assessments may be paid and the rate of interest which shall be charged upon all such installments from the date of the confirmation of the assessment until each installment shall be paid; provided, however, that the number of installments shall not exceed and the rate of interest to be charged upon the same shall be not less than nor more than per cent, per annum.

The word 'improvement' as used in this section (or act) shall be deemed to include the acquisition of title in fee or easement to any land required for streets, parks, bridges, tunnels, waterways, drains, sewers or buildings required for any public purpose, or the construction of streets, parks, bridges, tunnels, waterways, drains, sewers or buildings, or any other improvement ,the carrying out of which in whole or in part will increase the value of the property in the immediate vicinity of such improvement or witihn a district including the same, or will promote public utility, comfort, health or adornment for the entire city or part thereof."

I have not examined the Constitution to see what articles of the Constitution should be amended in order to provide for such an Act, and I trust your Committee will find a way to incorporate this provision, as I regard it as vital to the development of the City's transit plans.

Very truly yours,
WM. S. TWINING.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 22

EXECUTIVE—PRESENT ORGANIZATION AND CHANGES IN THE INTEREST OF EFFICIENCY

Harrisburg, Pa., January 27, 1920.

Hon. Geo. E. Alter,
Chairman of the Committee of Chairman of Standing Committees.

Dear Sir: I understand your Committee desire a Brief on

The Present Organization of The Executive Branch of the State Government, The Fundamental Principles of Efficient Executive Organization, and Suggested Constitutional Changes to Carry out these Principles.

I shall discuss the subject matter of your inquiry under the following heads:

First

Present Organization of the Executive Branch of the State Government.

Second

Generally Admitted Principles Underlying Efficient Organization of the Executive Branch of the State Government.

Third

How Far Our Present Constitution Prevents the General Assembly from Reorganizing the State Government in Accordance with the Five Above Stated Fundamental Principles.

Fourth

Constitutional Changes Necessary to Require the General Assembly to Adhere to the Above Stated Principles.

Fifth

The Imposition on a Department of Specified Duties by Constitution or Statute.

I. PRESENT ORGANIZATION OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT.

The Constitution specifies eight executive officers. All others are created by statute. It will be best to consider separately the powers and duties of the Governor, the powers and duties of the other constitutional officers, and lastly the powers and duties of statutory officers.

1. THE GOVERNOR.

(A) APPOINTMENT AND REMOVAL. The Governor is elected and can be removed only by impeachment.

(B) POWERS AND DUTIES.

(1) Article IV of the Constitution imposes certain duties upon the Governor as follows:

(a) To see to the faithful execution of the laws. §2

(b) To command the Commonwealth's armed forces. §7

(c) To give information and recommendations to the General Assembly. §11

(d) To approve and veto bills. §15

(e) To nominate and appoint the Secretary of the Commonwealth, Attorney-General and Superintendent of Public Instruction. §8

(f) To nominate to the Senate persons to fill vacancies in the office of Auditor-General, State Treasurer, Secretary of Internal Affairs, Superintendent of Public Instruction, judge, or any other elective office which he may be authorized to fill, if the vacancy occurs while the Senate is in session. §8

(g) To appoint such other officers of the Commonwealth as he may be authorized by law to appoint. §8

In addition to these duties the Governor is given certain enumerated powers which he may or may not excercise, as he sees fit. He may make certain appointments while the Senate is in recess, may remit fines and grant pardons, reprieves and commutations of sentence, and may call special sessions of the General Assembly if both houses cannot agree on the time of adjournment.

(2) Many other duties are imposed upon the Governor by statute, so that there are four ways in which he is called upon to discharge his executive responsibilities: (a) directly; (b) through appointed officials; (c) by appointing commissions; and (d) as a member of State boards and commissions.

(a) The Governor, for instance, acts directly when he orders the State Police to a certain place or when he mobilizes the National Guard.

(b) He is required by statute to appoint a number of officials by and with the advice and consent of the Senate. The principal officials thus appointed are:

State Librarian and Director of the Museum
Commissioner of Labor and Industry
Insurance Commissioner
Adjutant General
Chief of the Department of Mines
Banking Commissioner
Superintendent of Public Printing and Binding
Forestry Commissioner
Commissioner of Health
Secretary of Agriculture
Superintendent of State Police
Commissioner of Fisheries
Highway Commissioner.

(c) The Governor is required to appoint a large number of commissions which are thereafter left free to act with little direct responsibility to him. Among such commissions are those which direct the construction of the several state institutions, such as the Industrial Home for Women, and the Western Insane Asylum.

(d) The Governor is required to serve on a number of Boards as follows:—

Board of Commissioners of Public Grounds and Buildings
Soldiers' Orphans' School Commission
College and University Council
Board of Trustees of the University of Pennsylvania
Board of Trustees of the Soldiers' and Sailors' Home
Board to Pass upon the Necessity for Underground and Elevated Passenger Railways
General Meade Statue Commission
Board of Trustees of the University of Pittsburgh
Board of Trustees of Pennsylvania State College
Emergency Public Works Commission.

2. OTHER CONSTITUTIONAL OFFICERS.

(A) APPOINTMENT AND REMOVAL. The Lieutenant-Governor, Auditor-General, State Treasurer, and Secretary of Internal Affairs are elected. The Attorney-General, Secretary of the Commonwealth and Superintendent of Public Instruction are appointed by the Governor by and with the advice and consent of the Senate.

The Lieutenant-Governor and Superintendent of Public Instruction can only be removed by impeachment. The Audditor-General, State Treasurer, and Secretary of Internal Affairs can be removed either by impeachment or by the Governor "after due notice and full hearing on the address of two-thirds of the Senate." The Attorney-General and Secretary of the Commonwealth can be removed by impeachment or by the Governor at his pleasure.

(B) POWERS AND DUTIES.

(1) The Constitution imposes certain duties upon these officers as follows:—

LIEUTENANT GOVERNOR.

(a) To be President of Senate. §4

(b) To succeed to the Governor §13

(c) To act as a member of the Board of Pardons. §9

SECRETARY OF THE COMMONWEALTH

(a) To keep a record of all official acts of the Governor. §18

(b) To act as a member of the Board of Pardons. §9

(c) To "perform such other duties as may be enjoined upon him by law." §18

ATTORNEY-GENERAL.

(a) To act as a member of the Board of Pardons. §9

AUDITOR-GENERAL.

No duties specified.

STATE TREASURER.

No duties specified.

SECRETARY OF INTERNAL AFFAIRS.

(a) To perform the duties of the Surveyor-General. §19

(b) To act as a member of the Board of Pardons. §9

(c) To conduct a bureau of industrial statistics. §19

(d) To report annually to the General Assembly. §19

(e) To "discharge such duties relating to corporations, to the charitable institutions, agricultural, manufacturing, mining, mineral, timber, and other material or business interests of the State as may be prescribed by law." §19

SUPERINTENDENT OF PUBLIC INSTRUCTION.

(a) To perform the duties of the Superintendent of Common Schools. §20

(2) The statutory duties of these constitutional officers are of three kinds: (a) To act directly; (b) to act through appointed subordinates; and (c) to act as ex-officio members of State boards and commissions.

(a) The Attorney-General, for instance, acts directly when he renders an opinion to one of the State departments.

(b) The power to appoint all subordinates and to remove them at pleasure is generally vested in the principal officers of the State. It is in some cases limited by requiring the Governor's approval of the most important appointment.

(c) All of the constitutional officers, except the Lieutenant-Governor, are required by statute to act as members of certain State boards and commissions.

This system has two serious defects: It multiplies administrative bodies with overlapping duties; and it gives to State officers duties foreign to those primary duties which they are selected to discharge.

The duties of the Auditor-General illustrate this. He is elected to see to the proper collection of taxes and to the proper expenditure of public money. These duties are certainly sufficient to occupy his time. He is, however, ex-officio a member of the following boards and commissions:

Board of Revenue Commissioners, who apportion State taxes among the several cities and counties.

Sinking Fund Commission, who assign to the sinking fund available items of surplus funds.

Board of Trustees of the Soldiers' and Sailors' Home.

Board of Commissioners of Public Grounds and Buildings.

The first two of these bodies have duties germane to the Auditor-General's primary duties. But the last two seem to include him simply because he was at hand and available to fill an ex officio position.

The other consitutional officers of the State are required, as the Auditor-General is, to serve upon a considerable number of boards. Some of these are as follows:—

STATE TREASURER:

Board of Revenue Commissioners

Sinking Fund Commission

Commission on Soldiers' and Sailors' Home

Board of Commissioners of Public Grounds and Buildings.

ATTORNEY-GENERAL

Board of Public Accounts

Board on Elevated and Underground Passenger Railways.

General Meade Statue Commission

College and University Council

COMMISSIONER OF HEALTH

Water Supply Commission

Bureau of Medical Education

Dental Council

Quarantine Board

SECRETARY OF INTERNAL AFFAIRS

Board of Property

Dental Council

3. STATUTORY OFFICERS. These are numerous. The principal officers are appointed by the Governor and all are removable by impeachment or by the appointing power at pleasure. They act in three ways, as do the constitutional officers other than the Governor, that is directly, through appointed subordinates, and as ex officio members of State boards and commissions.

Among statutory officers must be included the large number of commissions and boards which the Governor is required to appoint to discharge executive duties. These are not included within any recognized department of the State Government, and act independ-

ently of all other bodies. The following examples will illustrate the nature of these commissions, whose number now approximates fifty:—

Commission on Gettysburg Monuments
Capitol Park Extension Commission
Canal Commission
Gettysburg Memorial Commission
Board of Motion Picture Censors
Game Commissioners
Delaware River Bridges Commission

4. OVERLAPPING BODIES.

It is of course an economy of time and overhead expense to reduce the number of boards and commissions as much as possible. This may readily be done by including all related bodies within a single department. The advantage of such a change will appear, for instance, by comparing the duties of the Board of Commissioners of Public Grounds and Buildings with those of certain other bodies. It has long been the practice of the General Assembly to provide for the erection of a State institution or of a monument by entrusting the matter to an appointed commission, who may or may not direct the conduct and maintenance of the institution or monument after its completion. For instance, there are the following special bodies of this kind:—

Commission to Purchase Land Opposite Independence Hall
Branch Capital Commission
Commission on Gettysburg Monuments
Commission on Industrial Home for Women
Robert Morris Monument Commission
Commission on Home for Inebriates
Capital Park Extension Commission
Commission on Western Insane Asylum
Commission on Village for Feeble-Minded Women

Gettysburg Battlefield Memorial Commission

Valley Forge Park Commission

General Meade Statue Commission

Commission on Delaware River Bridges.

Where similar conditions have existed in other states Efficiency Commissions have invariably pointed out that there would be an economy of effort and of overhead expense if the work of all of these commissions could be consolidated in one department charged with the construction of all public works and with the maintenance of such works after their completion.

The names and relations of the various state executive bodies are set forth in a valuable chart compiled by Harry McDevitt, Esq., Solicitor for the Economy and Efficiency Commission, dated January 1, 1917. The General Assemblies of 1917 and 1919, have, of course, altered to some extent the situation indicated by Mr. McDevitt. The General Assembly of 1917 created twelve new commissions to be appointed by the Governor and created also the Emergency Public Works Commission, consisting of the Governor, Auditor-General, State Treasurer, and Commissioner of Labor and Industry. The General Assembly of 1919 took certain very desirable steps toward consolidation and simplification of the executive departments. Several of the departments were reorganized and the number, duties and salaries of their employees specifically set forth. In the course of this process some unnecessary boards were eliminated, such as the State Board of Agriculture, the State Live Stock Sanitary Board, The Topographical and Geographical Survey Commission, and the Board of Trustees of the State Library. But much remains to be done.

In preparing this brief, I have made liberal use of Mr. McDevitt's chart and also of his report as Solicitor to the Economy and Efficiency Commission, dated March 28, 1917. Both of these documents are on file in the Secretary's office and deserve careful examination. In his report Mr. McDevitt has covered the situation in much greater

detail than it has been possible for me to do in the space of this brief, and has made specific recommendations looking toward both constitutional and statutory changes.

II. GENERALLY ADMITTED PRINCIPLES UNDERLYING EFFICIENT ORGANIZATION OF THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT.

(1) The work of the executive branch should all be concentrated in a limited number of departments, each directly responsible to the Governor.

(2) The Governor should be free to devote his time to general direction and supervisory control.

(3) The Governor should have the power to appoint all persons acting as heads of departments, except of the department or departments created to act as a check on expenditures.

(4) One person should not be an officer or exercise functions in two departments.

(5) Appropriations for expenditures should be under an executive state budget system.

I am not aware that these simple principles of efficient executive organizations are at present questioned by any person of large executive experience of a public or private character. They lie at the basis of all the recommendations of those commissions which have, in recent years, been appointed to consider the re-organization of the executive work of the Federal government, or of the different State or local municipal governments. They are, of course, not the only principles which should guide the organization of the executive branch of the State government, but each principle as stated is apparently of universal application.

Every one of them is violated in the existing organization of our State government, as appears from the brief outline of that organization which I have given above.

The work of the executive branch is distributed among approximately ninety independent departments, commissions, boards and other bodies, whose number (since it is not limited by the Constitution) is limited only by the will of the General Assembly. The Governor is required to serve ex-officio upon a considerable number of State boards and commissions and the other officers of the State are required to serve ex-officio upon commissions and boards for the performance of duties not related to their departments.

III. HOW FAR OUR PRESENT CONSTITUTION PREVENTS THE GENERAL ASSEMBLY FROM RE-ORGANIZING THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT IN ACCORDANCE WITH THE FIVE ABOVE STATED FUNDAMENTAL PRINCIPLES.

The present Constitution prevents the General Assembly from putting into effect the third, fourth and fifth of these principles, in the following manner:—

ARTICLE IV, SECTION 21.

This section makes the Secretary of Internal Affairs, the Auditor General and the State Treasurer elective officers. The provision requiring the Auditor-General to be elected and not appointed by the Governor is in accordance with the third fundamental principle as stated, because the very object of the creation of the Auditor General's Department is to act as a check on expenditures. On the other hand, making the Secretary of Internal Affairs an elective officer violates the principle that the Governor should appoint all the heads of departmens, except those that act as such a check. This violation of a fundamental principle has, however, been already tentatively corrected by the tentative adoption by the Commission of amendments to Section 8 and 21 of Article IV. These amendments, if finally embodied in the Constitution, will make the Secretary of Internal Affairs an appointive officer.

Whether the office of Treasurer is one which acts as a check on expenditure, or whether any other reason exists why it should be an

elective office, may be a subject for debate. The apparent trend of thought on the part of those who have given study to the subject is towards the existing practice of the Federal government, which is to impose those duties which in Pennsylvania are imposed on the Treasurer, on the Chief of a Bureau of a larger department (the Treasury Department) in which department are collected all matters of taxation and finance. In the present State Constitution, while the Treasurer is an elected officer, there is nothing to prevent the General Assembly from transferring to his department the duties in respect to the collection of taxes now imposed on the Auditor General.

ARTICLE IV, SECTION 9.

This section requires the Lieutenant Governor, the Secretary of the Commonwealth, the Attorney General and the Secretary of Internal Affairs to examine and pass on all petitions for pardons and commutations of sentence. Such a requirement, so far as it imposes duties on the last three named public officers, violates the fourth principle, namely that one person should not be an officer or exercise functions in two departments. If it is desired to correct this violation of a fundamental principle, the following changes in the Constitution may serve the purpose:—

Insert in Article IV between Sections 18 and 19 the following new section:

> Section 18-A. There shall be a division in the Department of Law known as the Board of Pardons, which shall be composed of the Lieutenant Governor, the Attorney-General and two other persons appointed by the Governor, not otherwise connected with the Department.

Amend Article IV, Section 9 to read as follows:

> He shall have the power to remit fines and forfeitures, and to grant reprieves, commutations of sentence and pardons,

except in cases of impeachment; but no pardon shall be granted, nor sentence commuted except upon the recommendation in writing of the Board of Pardons.

ARTICLE III, SECTION 15.

This section as at present worded prevents the adoption of an executive state budget system. The Commission has, however, already tentatively adopted a substitute section which not only permits but creates such a system.

IV. CONSTITUTIONAL CHANGES NECESSARY TO REQUIRE THE GENERAL ASSEMBLY TO ADHERE TO THE ABOVE STATED PRINCIPLES.

It is obvious that while the present Constitution does not in every respect require the violation of the above stated principles, it permits their violation by failing to impose appropriate restrictons upon the General Assembly. If it be desired to impose such restrictions, the following provisions would serve the purpose:

(1) To concentrate the work of the executive branch in a limited number of departments:

(a) Substitute for Article IV, section 1, the following:

Section 1. The executive power of the State Government shall be exclusively vested in a Governor, Lieutenant Governor and Executive Departments.

(b) Insert between Article IV, Section 17, and Article IV, Section 18, the following new sections:

Section 17-A. The General Assembly shall by law provide for the organization of the following executive departments:

1. Executive
2. Secretary of the Commonwealth
3. Law
4. Audit and Control
5. Finance and Taxation
6. Education

7. Charities and Corrections

8. Internal Affairs

9. Public Utilities

10. Health and Sanitation

11. Military and Naval Affairs.

The General Assembly may by law provide for the organization of the following additional executive departments and none other:

12. Public Works

13. Conservation

14. Agriculture

15. Labor

16. Banking

17. Insurance

18. Civil Service.

Section 17-B. There shall be the following heads of executive departments:

Secretary of the Commonwealth—Secretary of the Commonwealth.

Law—Attorney General

Audit and Control—Auditor General

Finance and Taxation—State Treasurer

Education—Superintendent of Public Instruction

Charities and Corrections—Superintendent of Charities and Corrections.

Internal Affairs—Secretary of Internal Affairs.

The General Assembly may place at the head of any other executive department a single public official or a board composed of two or more public officials.

Section 17-C. The General Assembly may create within an executive department a board or commission charged with executive duties but shall not impose executive duties upon

any person, board, commission or similar body not included within one of the executive departments; nor shall any public officer be appointed or required to perform executive duties in two executive departments. The duty of inquiring into conditions and making recommendations to the Governor or to any department, or to the General Assembly, is not an executive duty within the meaning of this article.

(2) To free the Governor from liability to service upon boards and commissions:

Insert between Sections 17 and 18 of Article IV a new section as follows:

Section 17-D. The Governor shall not be required to serve upon any board, commission or other body for the discharge of executive functions.

(3) To enlarge the Governor's powers of appointment and to prevent the creation of new elective offices:

(a) Amend the first paragraph of Article IV, Section 8, as already amended, so that it shall read as follows:

The Governor shall nominate, and by and with the advice and consent of a majority of the members of the Senate appoint the heads of all executive departments, except the Auditor General and the State Treasurer, and such other officers of the Commonwealth as he may be authorized by law to appoint.

(b) Substitute for Article XII, Section 1, two new sections as follows:

Section 1. All State officers whose selection is not provided for in this Constitution shall be appointed and all municipal officers shall be elected or appointed as may be directed by law.

Section 1-A. Elections of State officers shall be held on a general election day, and elections of municipal officers shall be held on a municipal election day except when in either case special elections may be required to fill unexpired terms.

(4) To prevent a state officer from acting in more than one department:

This is covered by Section 17-C as suggested above under (1).

It should be noted that in the above suggested new sections one of the required departments is the Executive Department. This is to provide for the Governor's necessary personal assistants. The person at the head of this Department, under some such title as Secretary of the Governor, would perform the important duties now performed by the Governor's Private Secretary, and in general fulfill with relation to the Governor the functions fulfilled by a chief of staff with relation to the general of an Army Corps. In this connection, it is perhaps worth considering whether the time has not come to follow the example already set by thirteen other States in abolishing the largely ornamental office of Lieutenant Governor (see Index Digest of State Constitutions).

V. The Imposition on a Department of Specified Duties by Constitution or Statute.

It is apparently generally admitted that the General Assembly, in order to meet new conditions as they arise, or to correct those mistakes which experience reveals in any existing division of executive duties among the different departments, should not be hampered by specific provisions in the Constitution from vesting specific powers in definite departments.

To this general rule there are exceptions. For various reasons, particular executive functions may be of such a character that it is important to require in the Constitution that they be performed by a particular officer or Department, thus though our present Constitution does not impose specific duties on the Auditor-General, there is a strong argument in favor of putting into the Constitution a section imposing on him those duties which act as a check on expenditures. For other, but equally important reasons, the Constitution should definitely locate the pardoning power and the method

of its exercise. Nevertheless, in the great majority of cases, the principle that the General Assembly should be left free to confer or withhold power from a department is a sound principle.

Again it may be important to require the State Government to retain a certain amount of control over a definite subject. This can best be done by inserting in the Constitution a provision giving that control to a definite department. Thus the almost universal desire to bring the charitable and correctional institutions of the State under some kind of State supervisory control might justify the adoption of a section giving to the Department of Charities and Corrections such control.

The present Constitution is a few instances does impose on definite designated departments specific duties, as follows:

ARTICLE IV, SECTION 18.

This article requires the Secretary of the Commonwealth to keep a record of all the official acts and proceedings of the Governor. The importance of the existence of such a record is so great as to justify an exception to the general principle just mentioned.

ARTICLE IV, SECTION 19.

This section requires the Department of the Secretary of Internal Affairs to have "a Bureau of Industrial Statistics." It is, indeed, probable that it would always be wise for the General Assembly to impose on the Department of Internal Affairs such a duty; but it is not apparent why the Constitution should contain a special mandate on the subject.

The first part of the section under discussion requires that the Secretary of Internal Affairs shall exercise the powers and perform the duties of the Surveyor General "subject to such changes as may be made by law." The curious wording of this provision raises a doubt whether the General Assembly has or has not the right to impose any of the duties exercised by the Surveyor General before 1874 on any department other than the Department of Internal Affairs.

ARTICLE IV, SECTION 20.

This section declares that the Superintendent of Public Instruction shall "exercise all the powers and perform all the duties of the Superintendent of Common Schools, subject to such changes as may be made by law." Here again we have the question whether any of the duties formerly exercised by the Superintendent of Common Schools could now be imposed on any Department other than that presided over by the Superintendent of Public Instruction.

ARTICLE XVII, SECTION 11.

This section provides that "the existing powers and duties of the Auditor-General in regard to railroads, canals and other transportation companies, except as to their accounts are hereby transferred to the Secretary of Internal Affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law, and in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof."

The first part of this section raises essentially the same question as that raised by Article IV, Sections 19 and 20. Is it possible for the General Assembly to vest in any department other than the Department of Internal Affairs, the powers and duties of the Auditor-General in regard to railroads, canals and other transportation companies prior to 1874, except the powers as to their accounts?

The last part of the section under discussion in effect imposes a duty on railroad companies. An effect of the provision has been to raise in the minds of some the doubt whether the General Assembly could create another department, such as the Public Service Commission, and impose on the railroads the duty of making special reports to such a department.

To reduce to a minimum the duties specifically required by the Constitution and to allow to the General Assembly broad scope in dividing executive duties among the several departments, the following constitutional provisions would serve:

(a) Amend Article IV, Sections 18, by omitting the final words: "and perform such other duties as may be enjoined upon him by law."

(b) Insert between Article IV, Section 18, and Article IV, Section 19, the following additional new sections:

Section 18-B. The Auditor General shall examine and adjust all accounts between the Commonwealth and any person or persons; he shall collect all money due the Commonwealth, and he shall draw his warrant upon the State Treasurer for any amount to be paid out of the public funds.

Section 18-C. The Department of Charities and Corrections shall have supervisory control over all public and private charitable and correctional institutions.

Section 18-D. Except as by this Constitution expressly provided, the General Assembly may require any executive department, irrespective of its name, to perform any executive duties whatever.

(c) Omit Section 19.

(d) Omit Section 20.

(e) For Article XVII, Section 11, substitute the following:

Section 11. The officials of all utility companies shall make such reports and to such officers as may be required by law.

Note. This substituted section, while it expressly imposes all duties imposed by the present section, does not add to the legal obligations of officers of utility companies, and would hardly seem to have any place in the Constitution.

Very truly yours,

WILLIAM DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 23

MUNICIPALITIES—CONTRACTS WITH PUBLIC UTILITIES—POLICE POWER OF STATE

Harrisburg, Pa., Jan. 27, 1920.

Mr. Charles H. English,
Chairman, Special Committee on Local Government.

Dear Sir:

I understand that you desire a Brief on The Actual Decisions of the Supreme Court of the United States and the Supreme and Superior Courts of Pennsylvania on the following questions:

First.

Can a State Legislature by contract surrender its power to regulate the rates and service of Public Service Companies?

Second.

If a State Legislature gives to a Municipality the right to contract with a Public Service Company, in respect to rates and service, and the Municipality makes such a contract, is the contract binding on the Company and the Municipality?

Third.

If a State Legislature gives to a Municipality the right to contract with a Public Service Company, in respect to rates and service, and the Municipality makes such a contract, can the State disregard the contract and regulate the rates and service?

I. Can a State Legislature by Contract Surrender its Power to Regulate the Rates and Service of Public Service Companies?

I am unable to find any decision of the Supreme Court of the United States or of the Supreme or Superior Courts of this State directly involving an answer to this question.

II. If a State Legislature gives to a Municipality the Right to contract with a Public Service Company, in Respect to Rates and Service, and the Municipality makes Such a Contract, is the Contract Binding on the Company and the Municipality?

(a) The Supreme Court of the United States has repeatedly held that the contract is binding on the municipality. Detroit v. Detroit Citizens St. Ry. Co., 184 U. S. 368 (1902): The City of Detroit gave the Railway Company the right to lay its track in the City of Detroit by an ordinance which regulated the rates of fare. This ordinance was accepted by the company and constituted a contract between the city and the company. The city had authority from the state to make such a contract. Later the city passed an ordinance changing the rates of fare as laid down in the first ordinance. Held:—The second ordinance was inoperative under the contract clause of the Constitution (Art. I, sec. 10), because it impaired the obligation of the city's contract with the company.

Accord:

Los Angeles v. Los Angeles City Water Co., 177 U. S. 558 (1900)
Cleveland v. Cleveland Electric Ry Co., 194 U. S. 538 (1904)
Cleveland v. Cleveland City Ry Co., 194 U. S. 517 (1904)
Vicksburg v. Vicksburg Waterworks Co., 206 U. S. 496 (1907)
Minneapolis v. Street Ry. Co., 215 U. S. 417 (1909)
Detroit United Ry. Co. v. Detroit, 39 Sup. Ct. Rep. 151 (1919)

(b) I have not found any decision in the Supreme Court of the United States involving the question whether the contract is binding on the company, but this, of course, is a necessary inference from the decisions above cited.

(c) There are apparently no decisions of the Supreme or Superior Court of Pa. involving this question.

III. If a State Legislature Gives to a Municipality the Right to Contract with a Public Service Company, in Respect to Rates and Service, and the Municipality Makes Such a Contract, Can the State Disregard the Contract and Regulate the Rates and Service?

(a) The only case in the Supreme Court of the United States bearing on the subject is Detroit United Railway v. Michigan, 242 U. S. 238 (1916). In 1889 the Detroit City Railway, by a franchise ordinance of Detroit, was given the right to lay its tracks in the city of Detroit. The ordinances contained a proviso for rates less than five cents during certain hours of the day. By ordinance of the village of Fairview, the Company was given the right to lay its tracks, etc. in the village for a term which had not expired when this case came before the court. This ordinance contained provisions for a five cent fare. The village of Fairview had authority from the State to make such a contract. The Detroit United Ry. acquired these rights from the Detroit City Ry. before 1907.

In 1907, by an act of the Legislature of Michigan, a part of the village of Fairview which included the railway in question was annexed to the City of Detroit. This act provided that the annexed territory should be subject to all the ordinances and regulations of the city of Detroit. The Supreme Court of Michigan construed this act to mean that the ordinance of Detroit of 1889 applied to the annexed territory.

Held:—The Act of 1907 as thus construed was inoperative because it impaired the obligations of the contract between the Village of Fairview and the Company.

Mr. Justice Pitney said (p. 253):—

"Because of the provision of §10 or Article I of the Constitution of the United States, it was not within the power of the State of Michigan by any subsequent legislation to impair the obligations of those contracts and since the judgment of the Supreme Court of that State gave such an effect to the annexation Acts of ..... 1907, in conjunction with the ordinances of 1889, as to impair those obligations, the judgments must be reversed."

The Supreme Court of the United States in the case just cited has held that the State cannot change or disregard the contract of a municipality regulating rates by destroying the municipality and declaring that the rates of force shall be the rates determined by a contract between the Public Service Company and another municipality. It is not a positive decision that the state cannot by any exercise of its police power fix other rates than those in the contract, but there is, of course, justification for citing it in support of such a proposition.

(b) There are apparently no decisions in the Supreme Court of Pennsylvania involving this question.

(c) The Superior Court of Pennsylvania has held that the State *may* disregard the contract in such a case.

Wilkinsburg v. Public Service Commission, 72 Pa. Superior Ct. 423 (1919).

An ordinance of the Borough of Wilkinsburg, granting the Pittsburgh Railways Company the right to construct its tracks on the streets of the borough, prescribed certain maximum rates to be charged. Later the company filed with the Public Service Commission a schedule increasing its passenger fares. The increase applied to the service in Wilkinsburg. The borough then filed a complaint with the Public Service Commission praying an order refusing the Commission's sanction to increase in fares. The Commission refused the prayer and the

Superior Court approved its action, basing its decision upon Section 3, Article XVI of the Constitution of Pennsylvania, which reads:

"The exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State."

The Court, by Trexler, J., said:

"We have no reference to the many cases from other jurisdictions for we think the question depends entirely on the construction of the above section of the Constitution, and is within narrow limits and requires no extended elaboration. We have also avoided the discussion of the cases which concern the question of the impairment of contract in changing a rate fixed in "consent' ordinances. The answer to the question is found in Leiper v. Balt. & P. R. R. Co., 262 Pa. 328 (332). 'It would be impossible for the commission to enforce an equality of reasonable rates, except upon the basis that it is not bound by contracts previously entered into between a public service company and either a municipality, another corporation, or a private individual.' * * * *."

Accord:

McKeesport v. Pittsburgh Ry. Co., 72 Pa. Super. Ct. 435 (1919).

Wilkinsburg v. Consolidated Tr. Co., et al. 72 Pa. Super. Ct. 437 (1919).

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 24

LOCAL GOVERNMENTS—BORROWING POWERS OF CO-EXTENSIVE MUNICIPALITIES

Harrisburg, January 27, 1920.

Mr. C. H. English,
Chairman of Special Committee
on Local Governments:

Dear Sir:— I understand that you desire a memorandum on:

The Respective Limits upon The Borrowing Power of Two or More Municipalities of Different Kinds Covering the Same Territory.

Under the present constitution a municipality cannot incur indebtedness exceeding ten per centum on the assessed value of its taxable property. If two or more municipalities cover the same territory and the General Assembly permit both municipalities to tax the same properties, the right of each municipality to incur indebtedness up to the constitutional limit has never been, as far as I am aware, questioned.

In practice School Districts, cities, boroughs and counties each covering the same territory and having the right to tax the same propery (Act of 18 May 1911, Art. V, sections 525, 538, 540, P. L. 338; 5 Purdon 5573-4; Acts of 11 May 1901, section 1 P. L. 152; 1 Purdon 497; 12 May 1911, section 1, P. L. 287; 6 Purdon 6851; 27 June 1913 Art. V, sec. 3, P. L. 568; 6 Purdon 6913) do actually each incur indebtedness.

In Philadelphia, the School District which covers exactly the same territory as the city (Act of 18 May 1911 section 101, P. L. 309; 5 Purdon 5554) may increase its indebtedness independently of the city. The legislature however has limited the total indebtedness of school districts of the first class, of which Philadelphia is one, to two per centum upon the assessed value of its taxable property (Act of 18 May 1911 sec. 535; 5 Purdon 5574).

Though the right of each one of two or more municipalities covering the same territory to incur indebtedness up to the constitutional limit has never been decided by the Supreme Court of Pennsylvania, yet it has been decided in the affirmative by the Appellate Courts of Illinois, Indiana, Kentucky, North Dakota, South Dakota, and Washington, all of their constitutions having substantially similar provisions to our own. (Wilson vs. Board 133 Ill. 443; People ex rel. vs. Honeywell 258 Ill. 319, Art. IX sec. 12; Campbell vs. Indianapolis 155 Ind. 186, Art. XIII sec. 1; Re Newport 141 Ky. 329, sec. 158; Valley vs. Grand Forks 16 N. D. 25, Art. XII, sec. 182; Hyde vs. Ervert 16 S. D. 133, Art. XIII, sec. 4; Paine vs. Seattle, 127 Pac. 580, Wash. Art. VIII, sec. 6).

One state, South Carolina, provides against two or more municipalities, each incurring indebtedness to the eight per cent. limit allowed for a single one by providing in sec. 5 Art. X, that:

> "Whenever there shall be several political divisions or municipal corporations covering or extending over the territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing 8% limitation that the aggregate debt over and upon any territory of this State shall never exceed 15% of the value of all taxable property in such territory as valued for taxation by the State."

In New York, Art. VIII, section 10, provides that the county's power to incur debt ceases when the county boundaries are the same as the city or where the county is wholly included in the city.

In some states, the credit of municipal corporations is controlled by placing a limit on the rate of the tax they are authorized to impose. The states thus limiting the tax rate are Alabama, Arkansas, Colorado, Illinois, Kentucky, Louisiana, Michigan, Missouri, Nebraska, North Carolina, New York, Texas, West Virginia, Wyoming. The rate allowed names from one half of one per cent. to two and one half per cent. and is usually exclusive of that existing at the time of the adoption of the Constitution or an additional percentage is allowed to pay for indebtedness then existing. (See Index Digest of Constitutions, pages 1399-1403.)

The Constitution of Pennsylvania fixes the limit of indebtedness of municipalities, but, it seems the General Assembly may place further restrictions upon the power of incurring indebtedness. By the Act of 20 April 1874, P. L. 65 and its supplements (3 Purdon 2719; 6 Purdon 6733) for carrying out the provisions of section 8 of Article IX, the General Assembly made no attempt to restrict the limits fixed in the Constitution, but provided for the incurring of indebtedness by any county, city, borough, township, school district, or other municipality up to the limit fixed in the Constitution. In at least one case, however, the General Assembly has fixed a rate below that allowed in the Constitution, namely, in the case of school districts of the first class, which are by the Act of 18 May 1911, sec. 535 P. L. 339 (5 Purdon 5574) restricted to two per cent. of their taxable property.

In Krause v. Philadelphia (decided Nov. 5, 1919, and not yet reported), though the question of the rate allowed by the Constitution was not in question, the powers of the General Assembly over municipaliies was re-affirmed, the Supreme Court quoting with approval from its earlier decisions that a municipality is "merely an agency

instituted by the sovereign for the purpose of carrying out in detail the objects of government * * * * the legislature who may enlarge or diminish its territorial extent, or its functions, may change or modify its internal arrangements or destroy its very existence." The Court held that sec. 8 of Article XVII of the Act of June 25, 1919, which restricts the purposes for which Philadelphia may incur indebtedness is a valid exercise of the legislative power and that sec. 8 of Art. IX of the Constitution could not be interpreted as giving an unrestricted right to Philadelphia to incur indebtedness.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 25

COUNTY OFFICERS' COMPENSATION FOR COLLECTING STATE TAXES.

Harrisburg, Pa., Feb. 2, 1920.

Mr. Francis Newton Thorpe,

Chairman, Committee No. 3.

Dear Sir: I understand you desire a memorandum on The Compensation paid by the State to County Officers for Collecting State Taxes.

I have received from the Auditor General a tabulated statement which you desire.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

COMMISSIONS RETAINED BY COUNTY TREASURERS; REGISTERS OF WILLS; PROTHONOTARIES, AND RECORDERS OF DEEDS, AS AGENTS FOR THE COMMONWEALTH, IN THE COLLECTION OF RETAIL MERCANTILE AND OTHER LICENSE TAXES (EXCLUSIVE OF LIQUOR LICENSES); COLLATERAL AND DIRECT INHERITANCE TAXES; AND WRITS, WILLS, DEEDS, ETC., UNDER THE SEVERAL ACTS RELATING THERETO, FOR THE OFFICIAL YEAR BEGINNING FIRST MONDAY OF JANUARY, 1918, AND ENDING WITH THE FIRST MONDAY OF JANUARY, 1919; IN THE SIXTY-SEVEN COUNTIES OF THE COMMONWEALTH:

	COUNTY TREASURERS. Rate: 5% on $1,000. 1% on $1,000, ½% on Balance. (Act of April 15, 1834, Sec. 42, page 544).	REGISTERS OF WILLS. Rate: Collateral—Act of May 14, 1891, page 59. Direct—Act of July 11, 1917, Sec. 14, page 838. (See note below).
Adams,	$402 47	$690 21
Allegheny,	4,550 34	21,661 68
Armstrong,	744 07	938 48
Beaver,	749 46	2,431 57
Bedford,	498 85	439 65
Berks,	1,522 47	5,198 42
Blair,	1,102 46	1,271 42
Bradford,	516 88	1,038 81
Bucks,	740 55	2,680 58
Butler,	799 89	2,079 56
Cambria,	1,219 38	2,005 08
Cameron,	144 37	55 99
Carbon,	438 18	1,603 45
Centre,	578 02	1,179 50
Chester,	1,143 23	6,473 57
Clarion,	420 73	563 04
Clearfield,	940 48	1,919 23
Clinton,	448 90	515 18
Columbia,	496 73	635 01
Crawford,	611 07	1,990 10
Cumberland,	538 66	1,482 17
Dauphin,	1,436 17	2,917 87
Delaware,	780 96	11,776 48
Elk,	401 84	146 82
Erie,	977 70	4,888 64

COMMISSIONS RETAINED BY COUNTY TREASURERS, ETC.—Continued.

	COUNTY TREASURERS. Rate: 5% on $1,000. 1% on $1,000, ½% on Balance. (Act of April 15, 1834, Sec. 42, page 544).	REGISTERS OF WILLS. Rate: Collateral—Act of May 14, 1891, page 59. Direct—Act of July 11, 1917, Sec. 14, page 838. (See note below).
Fayette,	1,035 47	9,550 33
Forest,	140 56	615 81
Franklin,	723 57	1,459 67
Fulton,	149 62	58 42
Greene,	175 21	1,853 85
Huntingdon,	644 65	371 54
Indiana,	775 95	817 46
Jefferson,	656 25	684 05
Juniata,	201 18	395 26
Lackawanna,	1,999 56	5,043 46
Lancaster,	1,592 14	6,524 39
Lawrence,	784 75	2,162 50
Lebanon,	621 50	1,928 21
Lehigh,	1,145 00	3,034 19
Luzerne,	1,497 15	4,356 70
Lycoming,	815 40	3,004 79
McKean,	525 37	3,261 93
Mercer,	751 49	11,493 11
Mifflin,	503 88	453 19
Monroe,	410 47	590 31
Montgomery,	1,155 41	8,410 97
Montour,	169 59	252 73
Northampton,	962 47	3,136 96
Northumberland,	724 65	1,725 93
Perry,	291 65	370 21
Phiadephia,	5,962 43	53,871 04
Pike,	170 85	253 88
Potter,	202 46	199 28
Schuylkill,	1,108 72	2,888 39
Snyder,	198 45	462 03
Somerset,	686 67	701 64
Sullivan,	127 53	‡

COMMISSIONS RETAINED BY COUNTY TREASURERS, ETC.—Continued.

	COUNTY TREASURERS. Rate: 5% on $1,000. 1% on $1,000, ½% on Balance. (Act of April 15, 1834, Sec. 42, page 544).	REGISTERS OF WILLS. Rate: Collateral—Act of May 14, 1891, page 59. Direct—Act of July 11, 1917, Sec. 14, page 838. (See note below).
Susquehanna,	251 31	639 03
Tioga,	314 65	616 13
Union,	247 56	389 02
Venango,	672 78	3,284 61
Warren,	450 72	1,774 09
Washington,	1,246 09	3,337 91
Wayne,	217 06	574 93
Westmoreland,	1,503 52	3,692 93
Wyoming,	159 55	266 35
York,	1 279 44	3,819 08
Total,	$54,456 59	$224,908 82

{No returns or payments for 1918.

COMMISSIONS RETAINED BY COUNTY TREASURERS; REGISTERS OF WILLS; PROTHONOTARIES, AND RECORDERS OF DEEDS, AS AGENTS FOR THE COMMONWEALTH, IN THE COLLECTION OF RETAIL MERCANTILE AND OTHER LICENSE TAXES (EXCLUSIVE OF LIQUOR LICENSES); COLLATERAL AND DIRECT INHERITANCE TAXES; AND WRITS, WILLS, DEEDS, ETC., UNDER THE SEVERAL ACTS RELATING THERETO, FOR THE OFFICIAL YEAR BEGINNING FIRST MONDAY OF JANUARY, 1918, AND ENDING WITH THE FIRST MONDAY OF JANUARY, 1919; IN THE SIXTY-SEVEN COUNTIES OF THE COMMONWEALTH:

	PROTHONOTARIES. Rate: 3%. Act of April 6, 1830, Section 7, page 274.	RECORDERS OF DEEDS. Rate: 3%. Act of April 6, 1830, Section 7, page 274.
Adams,	$6 74	.....
Allegheny,	306 20	$571 64
Armstrong,	7 66	.....
Beaver,	20 32	.....
Bedford,	6 58	.....
Berks,	23 67	118 65
Blair,	17 19	.....
Bradford,	13 87	.....
Bucks,	9 37	71 44
Butler,	8 75	.....
Cambria,	21 50	83 28
Cameron,	5 15	.....
Carbon,	5 18	17 08
Centre,	4 73	20 70
Chester,	13 96	71 88
Clarion,	4 67	.....
Clearfield,	10 59	.....
Cilnton,	4 83	.....
Columbia,	7 48	.....
Crawford,	14 96	.....
Cumberland,	8 84	31 15
Dauphin,	25 99	86 03
Delaware,	34 13	180 35
Elk,	2 56	.....
Erie,	27 59	.....
Fayette,	21 68	92 53

COMMISSIONS RETAINED BY COUNTY TREASURERS, ETC.—Continued.

	PROTHONOTARIES. Rate: 3%. Act of April 6, 1830, Section 7, page 274.	RECORDERS OF DEEDS. Rate: 3%. Act of April 6, 1830, Section 7, page 274.
Forest,	7 14	.....
Franklin,	7 25	.....
Fulton,	5 73	.....
Greene,	4 83	.....
Huntingdon,	8 25	.....
Indiana,	11 01	.....
Jefferson,	9 03	.....
Juniata,	2 50	.....
Lackawanna,	45 76	68 76
Lancaster,	18 62	90 74
Lawrence,	13 98	.....
Lebanon,	7 15	37 80
Lehigh,	16 72	116 94
Luzerne,	42 44	82 94
Lycoming,	12 52	.....
McKean,	5 76	32 13
Mercer,	15 57	75 20
Mifflin,	3 94	.....
Monroe,	5 43	.....
Montgomery,	22 56	157 93
Montour,	1 67	.....
Northampton,	20 20	108 86
Northumberland,	16 69	.....
Perry,	3 54	.....
Philadelphia,	467 19	1,489 59
Pike,	6 83	.....
Potter,	5 50	.....
Schuylkill,	19 52	43 86
Snyder,	2 49	.....
Somerset,	7 71	34 85
Sullivan,	.....	.....
Susquehanna,	6 74	.....
Tioga,	10 60	.....

COMMISSIONS RETAINED BY COUNTY TREASURERS, ETC.—Continued.

	PROTHONOTARIES. Rate: 3%. Act of April 6, 1830, Section 7, page 274.	RECORDERS OF DEEDS. Rate: 3%. Act of April 6, 1830, Section 7, page 274.
Union,	2 40	.....
Venango,	6 23	.....
Warren,	7 32	.....
Washington,	27 40	98 87
Wayne,	5 87	.....
Westmoreland,	27 35	159 42
Wyoming,	3 02	.....
York,	18 66	54 84
Total,	$1,567 37	$3,997 46

NOTE.

The rate of commissions to be retained by register of wills is now fixed by the Act of June 20, 1919, sec. 21, page 526. Hereafter, these commissions will be greatly reduced. Example: The gross amount of collateral and direct inheritance taxes collected in Philadelphia city and county, for the year 1918, was $2,381,874.86; commissions retained, $53,871.04. Under the new Act the commissions would have been as follows, viz:

5% on	$50,000 00	=	$2,500 00
3% on	50 000 00	=	1,500 00
1% on	100,000 00	=	1,000 00
½ of 1% on	800,000 00	=	4,000 00
¼ of 1% on	1,381,874 86	=	3,454 69
Commission on	$2,381,874 86	would be	$12,454 69
instead of			$53,871 04

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 26

COURTS—PROTECTION OF LEGAL RIGHTS OF POOR.

Harrisburg, Pennsylvania, Feb. 2, 1920

Hon. Hampton L. Carson,
Chairman of Committee No. 5.

Dear sir:—

I understand that you desire a memorandum on Constitutional Provisions for the Protection of the Legal Rights of the Poor.

With respect to the ascertainment and enforcement of their legal rights, the poor labor under three disadvantages:

(1) The necessity of employing counsel

(2) The cost of litigation

(3) The delays of litigation

(1) NECESSITY FOR EMPLOYING COUNSEL.

When a man wishes to employ counsel in an advisory capacity, for instance, to draw a contract or a will, he usually has enough money to pay for the services rendered, because the transaction is of a business nature. For such a man special protection is not required.

But even where counsel is required only in an advisory capacity there may be a duty to protcet the poor. For instance, the present housing situation with its attendant difficulties between landlords and tenants suggests that tenants who are unable, in ordinary times and tenants suggests that tenants who are unable, in ordinary times,

to pay a lawyer's fee, might well be guaranteed free legal advice before executing their leases.

But the great majority of cases in which the want of counsel places the poor at a disadvantage are cases of actual litigation. If a laborer wants to collect a ten dollar wage claim, he often has no idea what to do; his only recourse is to a lawyer whose fee may amount to half of the claim. A poor man does not intend to throw good money after bad, and so the claim is of necessity dropped.

Accident cases illustrate another phase of the same problem. When a man is injured outsdie of the course of his employment, he must usually employ a lawyer to sue for him. Since he is unable to pay any fee except in case of success, he must make an agreement for the payment of a fee only in case of success. Since the lawyer risks giving his services for nothing the amount of this contingent fee is frequently larger than the amount of work justifies. A half and half division between attorney and client of any amount obtained is not uncommon. Where a verdict runs into thousands of dollars, such a arrangement obviously takes too much from the injured man, and the arrangement is necessary simply because he is poor. A man who is able to pay his attorney, can arrange to pay no more than a reasonable fee no matter how high the verdict.

I do not intend to discuss the merits and demerits of the contingent fee system. I am simply pointing out that the necessity of it in many cases places the poor man at a disadvantage as compared to his more prosperous neighbor.

In large cities, as for instance in Philadelphia, legal aid societies do a great deal to counteract this disadvantage of the poor. In Philadelphia the Legal Aid Society handles over 5,000 cases a year. Most of these are cases in which the attorneys of the society in preventing litigation by settlement or by advice. Where litigation is inevitable it is conducted by younger attorneys who volunteer their services and receive moderate fees out of any sums collected, the amounts of these fees being strictly supervised by the society.

There has been in the past few years a growing feeling that free legal aid work is a public function and that it should be discharged by a governmental agency. In at least nine cities public legal aid bureaus have been opened (St. Louis, Los Angeles, Kansas City, Portland, Omaha, Dallas, Dayton, Duluth, and Hartford). So far as I can ascertain each of these is conducted as a part of the city administration. In some of these cities the work of the public bureaus has been most encouraging. But in Dallas and Portland they were abolished in 1917 for political reasons. To entrust this function to the executive branch of the local government seems precarious, because the choice of an attorney of the Bureau of Legal Aid, which is obviously a matter of prime importance, will almost inevitably be controlled to some extent by political considerations. The abuses to which an unfit attorney might subject the system are plain. His opportunities for making money improperly for himself and his friends would be almost unlimited.

There is a strong argument for the proposition that the matter of furnishing free counsel to the poor is properly a matter for the courts. Theoretically, that is now the situation in Pennsylvania, since the statute of 11 Henry VII, cap. 12 (A. D. 1494) is still in force in this State (Report of the Judges in 3 Binney). The statute provides that "every poor person" shall be able to sue without cost, and that the court shall "appoint attorney and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help and business in the same." (Roberts' Digest of British Statutes in Pennsylvania, page 116.)

It will be observed that no provision is made for defendants; they must get along without counsel as best they can. And so far as plaintiffs are concerned the practice of assigning counsel is practically obsolete in Pennsylvania, to the best of my knowledge. No

doubt any judge would undertake to find volunteer counsel for a worthy suitor, but it is not generally known that the statute law requires him to do so, and he is in consequence very seldom called upon.

In Scotland and France, the bench and bar have for centuries combined to operate a legal aid system by virtue of which free counsel is assigned to those who cannot pay for legal services. In Scotland, whose population is considerably less than that of Pennsylvania, about two thousand persons a year apply for the assistance. In England the High Court of Judicature has complied a list of solicitors and barristers who are willing to accept unpaid assignments, in criminal cases. I believe that it is the practice in the country counties of Pennsylvania to assign counsel to every defendant not represented. Such a system does not prevail in Philadelphia, except on the trial of indictments for murder.

If it be thought that every man should be entitled to the services of counsel in litigation, irrespective of his ability to pay for such services, the question arises as to how far the Constitution can embody such a principle. A detailed outline of a public legal aid system is evidently out of place in a Constitution, because it would have to be modified to meet changing conditions and the teachings of practical experience.

The Constitution might direct the General Assembly to legislate in the matter; and might compel a compliance with the direction by providing that the salaries of legislators should cease unless an appropriate act was passed within a designated period.

A third method is to insert in the Constitution an express provision covering the assignment of counsel to poor persons. It should be observed that unless such counsel were compensated from the public funds there is some question as to whether this would not violate the Fourteenth Amendment to the Constitution of the United States, by depriving the assigned lawyer of his property without due

process of law. (Webb vs. Baird 6 Ind. 13, Dane County vs. Smith, 13 Wis. 585). Possible constitutional provisions to carry out the last two methods are suggested below in this brief.

The converse aspect of this matter of employing counsel also deserves mention. It has been felt in some jurisdiction that the attendance of lawyers in small claims cases impedes justice rather than assisting it. As a result, in Kansas, and in Portland, Oregon, attorneys are excluded by law from the special small claims courts, while in Cleveland their attendance is discouraged by the attitude of the court and bar. Whatever may be the merits of such a system it cannot be embodied in the Constitution unless that instrument is to create a special court from which attorneys are to be excluded. The question as to the exclusion of attorneys from certain courts can best be answered by statute, since there is no impediment in our State Constitution to such exclusion. It should be noted that a doubt might arise as to whether a litigant was not entitled to representation by attorney by virtue of the due process clause of the Federal Constitution.

(2) COSTS.

The second disadvantage under which the poor labor in securing their legal rights is the necessity of paying the costs incident to litigation. To institute suit it is necessary to pay a fee to the prothonotary and another to the sheriff. When the time of trial comes witnesses may refuse to attend unless paid their fees in advance. Jury fees also must now be paid in advance. All of these charges make a small claim of fifty dollars or less scarcely worth pursuing.

The problem here, as in the matter of the employment of counsel, is a problem of expense. The poor plaintiff hesitates to risk ten dollars for the sake of recovering twenty. To the defendant, of course, the matter of costs is not so material.

There are two ways of meeting the cost situation. One is to elimi nate costs entirely in favor of persons who are actually unable to pay them. The other is to graduate costs so that they will fall less severely upon a plaintiff with a small claim.

The first method is theoretically in force to-day. The Statute of 11 Henry VII, which I have already referred to as in force in Pennsylvania, provides that "every poor person or persons which have or hereafter shall have causes of action against any person within this realm shall have by the discretion of the Chancellor of this realm, for the time being, writ or writs original, and subpoenas according to the nature of their causes, therefor nothing paying to your Highness for the scale of the same, nor to any person for the writing of the said writs to be hereafter sued," with a further clause covering the gratuitous services of "all other officers requisite and necessary to be had for the speed of the said suits." This is the foundation of what is known as the proceedings in forma pauperis.

From the wording of this statute it is doubtful whether it covers the elimination of any of our costs except those of the prothonotary. But the question of its scope is academic only, because so far as I can learn, the statute is never invoked. There are special statutes permitting proceedings in forma pauperis in inquisitions in lunacy, in appeals from awards of arbitrators and in appeals from justices' judgments. But for the great majority of litigation there is no provision except the Act of 1494 which has fallen out of sight and into disuse.

If it be desired to insert in the Constitution a provision guaranteeing to every man, irrespective of poverty, his right to sue and defend and his right to the advice and assistance of counsel, the following additional section in the Judicial Article would serve the purpose:

ARTICLE V—Section 28: Any person who shall be unable, without great hardship, to employ counsel or to pay the costs of litiga-

tion shall be entitled to the gratuitous services of counsel to be assigned to him by the court, or to relief from the payment of such costs, or both, as justice shall require.

If it be desired to insert in the Constitution simply a direction to the General Assembly, the following would serve the purpose:

ARTICLE V—Section 28-A: The General Assembly shall provide by law for the assignment of gratuitous counsel and for relief from the payment of the costs of litigation to any person who shall be unable, without great hardship, to employ such counsel or to pay such costs, as the case may be.

The first of these provisions creates, or rather resurrects, a system which will be administered by the courts unless and until regulated by general law. The second provision creates nothing and produces no result unless and until the General Assembly acts.

A second method of curing the evil of prohibitive costs which is of course not exclusive of the first method, is to reduce the costs in proper cases. This may be done by radical changes in proceedure, such as eliminating the need of services by the sheriff, as is done in New York, or by simply reducing costs in small claim cases. In Cleveland for instance, the average cost of bringing suit in the Small Claims Court is only fifty-two cents, while in the Municipal Court of Philadelphia it is from four to eight or nine dollars according to whether a jury trial is demanded and according to the distance which the sheriff will have to travel to serve the writ. Such changes in procedure would be statutory and would require no express constitutional sanction.

A graduated table of costs would serve to distribute more fairly the burden of the expense of litigation. If for example the total costs could never exceed three per cent. of the amount involved, with a miximum limitation of ten or twenty dollars, the enforcement of a small claim would become much easier. Of course such a table of costs would necessarily be contained in a statute. It might be

suggested that such a statute would violate Article III, Section 7, Clause 17, of the Constitution, which forbids special legislation regulating the practice of any judicial proceeding or providing or changing methods for the collection of debts. To obviate such an objection the following proviso might be inserted at the end of this clause:

Provided, however, that the costs of litigation may be classified or graded according to the amounts in controversy.

(3) DELAYS.

The third disadvantage under which the poor plaintiff labors is his inability to bear delay. Usually he must receive redress quickly if it is to be of any real service. A richer man on the other hand can usually afford to wait, and delays though they are annoying to him are not vital matters.

The only cure for the evils of delay is change in proceedure and this is a matter with which a Constitution cannot properly deal, because proceedure is a matter of many details, necessarily subject to constant change. For reform in this respect we must look to the rapidly growing and active sentiment of the public, the bench and the bar.

There is one way in which this sentiment may particularly find expression. If all matters of proceedure were entrusted by the General Assembly to the courts the judiciary would in all probability rise to the opportunity, and by increasing the flexibility and simplicity of practice reduce the delays which now especially vex poor litigants. At the same time and by the same rules the courts could make effective the suggested guarantee of free counsel and free litigation to the very poor. Such a delegation of power to the courts might be open to question in so far as it covered such matters as the law of evidence, because it might be argued that such matters could only be regulated by an exercise of the legislative power, which cannot be delegated. To avoid this difficulty, the Judicial Article of the Constitution might contain a new section as follows:

ARTICLE V—Section 28-B: The General Assembly may vest in any court of courts or judges power to regulate partly or wholly the methods to be followed in judicial proceedings.

The best study of this general subject which has come to my attention is a two hundred and fifty page pamphlet entitled "Justice and the Poor," prepared by Reginald Heber Smith, Esq., of the Boston Bar, for the Carnegie Foundation for the Advancement of Teaching. This pamphlet is on file in the Secretary's office.

I believe that the suggested provisions which I have here called to your attention are substantially all those which it is practicable to add to the Constitution for the protection of the legal rights of the poor. For the Commission to attempt to create another constitutional court or further regulate the jurisdiction of any existing court by constitutional mandate would, it is submitted, retard rather than hasten any solution of the grave and pressing problem of giving adequate protection to the rights of the man of little means.

Such examination as I have been able to give to the subject matter of your inquiry serves to confirm my conviction that the defects in the administration of justice in America can be ameliorated only after a thorough study of court organization and judicial proceedure. Such a study to be worth anything must necessarily extend far beyond the limits of constitutional provisions and concern itself principally with legislative and judicial action. It is a work which the Commission in view of its composition and the limitations of its duties to constitutional amendment and revision ought not and indeed cannot take up.

Doubtless your Committee have and the Commission will cerefully consider the advisability of encouranging the General Assembly to appoint such a Commission by giving the General Assembly the power to act on any recommendations which such a Commission might make and by striikng out from the present Constitution all reference to any specific court except the Supreme Court, while

providing for the continuance of all courts now established until changed by the General Assembly, and protecting each judge from any change which will adversely affect his salary, term of office, or the general character of the work in which he is engaged.

Very truly yours,

WILLIAM DRAPER LEWIS.
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 27

MUNICIPALITIES—IMPROVEMENTS—EXCESS CONDEMNATION—ASSESSMENT OF BENEFITS.

Harrisburg, Pa., Feb. 3, 1920.

Mr. C. H. English,
Chairman of the Special Committee on Local Government.

Dear Sir:

I understand you desire a memorandum on some of the Arguments of the Advocates of Giving to Municipalities the Right to Assess Benefits for Public Improvements Irrespective of Relative Position of the Improvment and the Land Assessed, and the Right to Take and Resell under Restrictions Land Incidental to but not used for the Improvement.

In response to your inquiry, I submit herewith a letter I have received from Mr. Andrew Wright Crawford, Secretary of the City Parks Association of Philadelphia and Field Secretary of the American Civic Association.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Mr. Wm. Draper Lewis,
Secretary of the Commission on
Constitutional Amendment and Revision.

Dear Sir:

You have asked met to state the arguments in favor of the proposed constitutional amendments embodies in Sections 18 and 19 of the new Article on Municipalitis reported to the Commission by the Special Committee on Local Government. I am happy to comply with your request.

These amendments are not surpassed in importance by any proposed, insofar as dwellers in cities are concerned, because they affect the financial ability of cities to undertake physical developments and the protective power of the cities to secure public health. Every existing and every future municipality of the State, whether cities of the first, second or third class, every borough and every township, is interested in them. They concern more than one-half of the population of the State.

Every city grows and is bound to grow. During the four years of Mayor Moore's administration alone, a new city equal in population to Columbus, Ohio, will be added to the existing population of Philadelphia, due to the normal growth of 45,000 to 50,000 per year. The other cities of Pennsylvania also grow, proportionately, some faster, some more solwly. Each must open new streets, new parks, and create other improvements in heretofore undeveloped areas. The older cities must also create new central improvements. Philadelphia, sooner or later, must build a business street running northeastwardly from the vicinity of 13th and Arch Streets; must build some kind of a central traffic circuit; and is at work on a general rapid transit system.

To the former general class of new work the principle of the assessment of special benefits on the entire zone bnefited should be made applicable in Pennsylvania, as it is to-day in nearly every other

state of the Union; to the latter class of improvements, which may be called reconstruction, the principle of excess condemnation should be made applicable as it has been in at least four states.

I. EXCESS CONDEMNATION.

(Section 19 of the Article on Municipalities.)

The excess condemnation amendment to the Constitution of Massachusetts adopted in 1911; that of New York in 1913; that of Ohio in 1912; and that of Wisconsin in 1912, are given on pp. 91 and 92 of the book submitted herewith entitled: "Excess Condemnation: A Report of the Committee on Taxation of the City of New York," published in 1915. (Note: On File in the Secretary's office.) That report contains, on pp. 13 to 22, a statement of the reasons for excess condemnation.

The Pennsylvania Legislature passed the excess condemnation Act of 1907, which I drew, and in his opinion sustaining the Act Judge Sulzberger referred to some of the physical reasons for the power as follows:

"The City of Philadelphia has designed to build a noble highway from its City Hall to Fairmount Park. It was to pass through a region containing buildings insignificant and mean in appearance. Many of the private homes were small, and the owners, however gifted with taste or actuated by public spirit, could not build structures of sufficient magnitude to give dignity to the highway.

"In order to prepare the way for a highway, which should by its character beautify the City and increase its attractiveness and renown, it was felt that the City should have power to control the property abutting on the Parkway to the depth of 200 feet beyond and should so exercise this control, as to assure the erection of stately and attractive buildings along the whole length of the Parkway. The first necessity was, therefore, to break up the small holdings and to establish the rule that buildings must be of a minimum width far greater than most of the actual buildings. Other rules would then follow,

regulating the minimum, maximum and proportionate height of buildings, the relation between buildings on adjoining lots, the prohibition of blind walls and kindred matters. * * *

"The real purpose was the development of a highway, which should be a model of architectural beauty and impressiveness. That such a feature of a great city is of value cannot be denied. It is an important educational force which tends to improve good taste in buildings in all sections of the City and the Commonwealth. Moreover, it has an effect directly utilitarian. It increases the attractiveness of the City, induces strangers to visit it and thus enlarges trade and commerce.

"It is to the weight of all these considerations that we must attribute the enactment of the statute of 1907."

I regret to state, however, that the decision of the lower Court was not wholly sustaind by the Supreme Court, which on appeal held that the provision of the act authorizing the condemnation of land abutting on a parkway for the purpose of resale was unconstitutional.

THE JUSTNESS OF EXCESS CONDEMNATION.

Indispensable Physical as well as important Financial Results.

New diagonal streets necessarily cut the boundary lines of the properties fronting on the older existing streets at all sorts of angles, varying from one or two degrees to eighty-eight or eighty-nine degrees. Obviously no satisfactory building can be erected on a lot that slants away from a new thoroughfare at an angle of, say ten degrees. The power of excess condemnation enables cities to take all of these irregular lots and others in their neighborhood and recast the entire abutting property, so that new lot lines at right angles to the new thoroughfare are created. Thus workable property units are secured.

Another and important physical result is that the width of the lots can be made to bear a proper relation to the width of the new

highway. A fourteen-foot lot fronting on a two-hundred-foot-wide parkway is an incongruity.

Similarly, a fifty-story building may be as ill-suited to such a thoroughfare as a two-story building and, as Judge Sulzberger says. "The maximum and minimum height constitute a matter, that it is extremely desirable for the City to be able to regulate."

We have not had in Philadelphia as much experience of the small "gores," the thin pieces of property left by a widening, as they have in New York and Chicago. But the time cannot be far distant when there will be plenty of such examples if this power is not secured. If a corner property is twenty feet wide and, say, one hundred feet deep, dan the City condemns a width of seventeen or eighteen feet, the remaining slice of two or three feet is useless for the owner unless he chooses to blackmail the adjoining owner should be desire to make his property the corner property, which is desirable both for him and for the city.

Important as is the power of excess condemnation in the case of such a Parkway as the Fairmount Parkway, it is more important for such a business street as that poposed to run from the center of the city northeastwardly, for such a street should result in the creation of large single lots for the erection of large buildings; and this is only practicable to any considerable extent if the city can recast the lot lines as the result of its ownership of the abutting property.

On the financial side, I present for example the following figures with regard to three municipal operations in Montreal:—

ACTUAL RESULTS OF EXCESS CONDEMNATION IN MONTREAL.

St. Lawrence Boulevard Opening

Amount of land taken	102,002 sq. ft.
Land used for street purposes	49,910 sq. ft.
Land sold	53,092 sq. ft.
Total purchase price	$690,570
Net returns from sales	716,194
Profit	$25,625

Cartier Street Opening

Land purchased	130,817 sq. ft.
Land used as street	55,637 sq. ft.
Land sold	75,180 sq. ft.
Total purchase price	$99.626
Net proceeds of sale	112,443
Profit	$12,817

George Etienne Cartier Square

Land purchased	164,504 sq. ft.
Land used as street, lots and square	82,426 sq. ft.
Land sold	82,038 sq. ft.
Total purchase price	$82,252
Net proceeds of sales	99,032
Profit	$16,780

ACTUAL RESULTS OF EXCESS CONDEMNATION IN LONDON.

A pamphlet issued by the City Club of New York makes the following statement with regard to such operations in England:

"This policy has produced satisfactory results in European cities. In London the cost of opening the following streets was reduced by the following percentages, by the re-sale of surplus property:

Street	Percentage
Carrick Street	72%
Southward Street	67%
Queen Victoria Street	53%
Northumberland Avenue	$600,000 profit
Kingsway	87%"

The opening of the Kingsway in London by the condemnation of abutting property and the recoupment of a very large part of the cost of the improvement by the renting of the excess property so acquired on long-term improvement leases has been widely published. While the original cost of the Kingsway was $30,000,000, the net cost on the basis of capitalized leases appears to be only $4,000,000. As a matter of fact these leases are for ninety-nine years, which means that at their termination the city will come into vastly valuable possessions of improved property. That financial results for the taxpayers are obviously most satisfactory.

The excess property taken in the Kingsway operation is shown by the Plan reproduced in the New York Taxation Committee's Report on "Excess Condemantion" already referred to. That report gives the results of many operations.

Similar operations in Birmingham carried out by Joseph Chamberlain, when a member of the City Council, constituted one of the powerful levers by which he secured his ascendency in British politics. The optrations of Haussmann in Paris and of the authorities of German cities are well known.

By "excess condemnation" the owner of the property secures everything that he owns at the time of the condemnation, but he does not get an additional benefit to his pocket causesd by the expenditure of the City's money. Instead, this benefit is acquired by the City at the time of the re-sale or lease of the property. It is the expenditure by the City of the taxpayers' money that causes the improvement in values and the taxpayers in their corporate capacity of the city should get the benefit.

II. ASSESSMENT OF BENEFITS.

(Section 18 of the Article on Municipalities.)

A constitutional amendment is much needed to raise the law of Pennsylvania to the level of the justice secured now in the great majority of the states of the United States.

The principle is to assess the direct special monetary increase in values caused by a public improvement upon the properties specially benefited, whether directly abutting on the improvement or not, the payment of the assessment generally being spread over a period of ten years.

The broad justice back of the principle is that he who sows should reap, and that, as the taxpayers' money causes the increase, the taxpayers' public treasury should reap that increase.

While an important public work couses a general, much-diffused increase of values over the whole community, there is always a direct special benefit on the porperty very directly within the sphere of influence of such a work, and it is only this specially benefited property that is assessed specially.

The method of paying for improvements through the assessment of benefits upon properties affected, whether or not they touch the improvement, is finding more and more general application throughout the United States. The courts of Pennsylvania have limited such assessments to abutting properties, an arbitrary rule that accords with neither fact nor justice, while an old act of the legislature actually prohibits the assessment of benefits upon even abutting properties for the taking of land for park purposes, although it is well known that the values of abutting properties are invariably immensely enhanced by the creation of a park. The following is a quotation from a report of the Committee on Comprehensive plans:

"That the opening of streets, the construction of transportation lines, the creation of parks and other large municipal improvements greatly increases the value of property is proven in every case, where

such improvements have been made, and it is very seldom that the owners of property benefited contribute any substantial aid, financial or otherwise, toward the improvement. The opening of the Boulevard from Broad Street through the northeastern part of the city more than doubled the value of property in its vicinity, yet the owners of the benefited property contributed nothing whatever.

"Prior to the construction of the Market Street subway-elevated line (in Philadelphia) the average annual increase, during several years, in the assessed value of property in the West Philadelphia wards was about $2,300,000, while the average increase in the same area since its construction has been about $11,500,000, most of which has been in the section served directly by the car lines using the subway. The territory benefited contributed nothing toward the construction of the lines, although it received enormous benefits.

"Several years ago the town of Brookline, Mass., widened Beacon Street from 50 to 175 feet at a cost of $450,000, and within five years property within five hundred feet of the widened street advanced $5,000,000 in value.

"In the seven years immediately succeeding the construction of the New York Rapid Transit Subway, property in upper Manhattan and the Bronx most directly affected advanced $80,500,000 beyond the normal increase for that period. The portion of the subway in that particular district cost about $13,000,000 and its total cost from the Battery to its northern terminal was $43,000,000. If the entire cost had been assessed against only the northern section referred to, there would still have remained the handsome profit of $36,500,000 for property owners. Several large municipal undertakings now being financed by this method may be noted as showing that cities are adopting this policy of requiring property benefited by an improvement to pay at least a portion of the cost.

During the past eighteen years Kansas City, a city of 275,000 population, has expended nearly $12,000,000 in the creation of a sys-

tem of parks and parkways, 82.3 per cent. of which has been assessed against benefited property; a special assessment is also levied against the benefited area for maintenance.

"New York is now opening Queens Boulevard of the width of 200 feet from the Queensborough Bridge to Jamaica, a distance of about eight miles; part of this work consists of widening an 80 foot street through improved property. The City pays 50 per cent. of the cost, the Borough of Queens 30 per cent. and the remaining 20 per cent. is being assessed against benefited property.

"In the extension of Seventh avenue and widening of Varick street in lower Manhattan the former was extended and the latter widened through solidly built up blocks. This improvement is somewhat similar to the proposed Central Traffic Circuit and its cost was distributed as follows:

Upon the frontage.....12 per cent.
Upon a larger benefited district.....33 per cent.
Upon the Borough of Manhattan.....40 per cent.
Upon the Borough of Brooklyn.....11 per cent.
Upon the Borough of Bronx..... 4 per cent.

"This improvement lies entirely in the Borough of Manhattan, and, while the Boroughs of Brooklyn and Bronx are each assessed a portion of the cost, no part of it is laid upon the Boroughs of Queens or Richmond, as those sections of the city receive no benefit.

"The widening of Twelfth street and the extension of Michigan avenue, in Chicago, are also similar to the Traffic Circuit in that they pass through solidly built up areas in the centre of the city. The estimated cost exceeds $12,000,000, about one- half of which will be assessed against benefited property."

It should be appreciated that failure to assess special benefits, where there are special benefits, cripples the progress of the city and prevents other property owners from getting improvements to which they are equally entitled. The city has only a certain sum to spend

on developments; the assessment of benefits will make that sum go much further than it would if there were no such assessment.

For instance: If the city spends $5,000,000 on an improvement and no benefits are assessed, that one improvement is all it gets. Suppose, however, it assesses 80% of that cost on the zone of property increased in value by it; the city will then have $4,000,000 for another improvement; if it assesses 80% of this cost likewise, it will have $3,200,000 for a third improvement; after that improvement is likewise financed by special assessments, it will have $2,560,000 for a fourth; then $2,048,000 for a fifth, $1,636,400 for a sixth, and so on; getting many times more improvements than it otherwise could. If the special assessment is higher, then the $5,000,000 will go farther; if lower, it will not go so far. The percentage of the assessment will probably vary with each improvement, but the city is bound to progress far more rapidly than it would, if the expenditure of the taxpayers' money is not permitted to reap the benefit in special improved values, which that expenditure creates.

The need of adequate laws, by which property, specially increased in value by a public improvement, shall be compelled to pay for it, has become better and better understood. Director Twining, following the lead of transit legislation in New York and California, has urged the importance of such a provision in connection with the building of rapid transit lines.

It is obviously unfair to compel property owners in Southeast Philadelphia to pay interest and sinking fund charges on loans for rapid transit construction, when they will really get no practical benefit from them ,while many landowners in other sections will be permanently enriched thereby.

Director Twining justly said:

"Shall the city, in return for the burden it assumes, receive a fraction of the financial profits, which will result from these lines, or shall these benefits all flow toward the enrichment of a small number of surburban land owners and operators in real estate?"

Very truly yours,

ANDREW WRIGHT CRAWFORD,
Secretary, The City Parks Association,
Field Secy., The American Civic Association.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 28

PROPORTIONAL REPRESENTATION.

Harrisburg, Feb. 9, 1920.

Mr. John A. Voll, Commissioner.

Dear sir:

I understand you desire a brief on Proportional Representation and the reasons advanced in its support.

The subject of your inquiry may be discussed under the following heads:

A. Alleged Defects of the Present System of Electing Representatives.

B. The Proportional System Contrasted.

C. The Progress of Proportional Representation Abroad and in this Country.

D. The Hare system of Proportional Representation, as Suggested for Pennsylvania.

E. Results where the System is Used.

F. Advantages Claimed for it.

G. Its Practicability.

H. The Bearing of the Present Constiution on Proportional Representation.

I. Text of the Constitutional Changes Suggested.

(A) Alleged Defects of the Present System.

The present system of electing representatives by plurality or relative majority is believed by advocates of proportional representation to be gravely defective and indeed likely to thwart some of the fundamental objects which the founders of the Commonwealth intended to carry out.

It is pointed out that in the State senatorial election of 1916, which covered only twenty-five districts or half the state, not less than 236,957 voters marked their ballots for candidates who were not elected. In half of the state, in other words, there were 236,957 voters who were "represented" in the Senate by men whom they did not want. In the remaining districts, which held senatorial elections in 1918, the number of voters whose votes for Senator were ineffective in the same way, was 207,555. This makes the total of ineffective votes for the present Senate (Disregarding elections to fill vacancies) 444,512, or more than two-fifths of the votes cast. Advocates of proportional representation maintain that nearly all vetos for members of legislative bodies can and should be made effective, by helping to elect a member.

The present system of election it is claimed often results in grave unfairness to one or more parties. The senatorial elections just referred to furnish an example of this:

Election of the Present Senate of Pennsylvania.

The figures in this table are for the Senators actually holding office January, 1919, (including Senators Sproul and Beidleman, whose vacancies had not yet been filled). Vacancy elections occurring since January, 1919, have been disregarded.

Party	Total Vote for Senators	Senators Elected	Senators in Proportion to Vote	Senators, more (+) or less(—), which the Party should have
Republican,	589,998	45 (Six endorsed by Democrats)	30	—15
Democratic,	359,914	5	18	+13
Socialist,	33,167	0	1	+ 1
Prohibition,	26,311	0	1	+ 1
Washington,	14,873	0	0	
		—	—	
		50	50	

An example from our national elections is furnished by the Congressional elections of 1912, in which the Progressive Party, which cast 4,106,247 votes for President, about twenty-eight per cent. of the total number cast, should, according to the principle of proportionality (assuming that its vote for Congressmen was nearly as large as its vote for President) have elected more than a hundred members of the national House. In fact, however, the votes of the Progressives were so distributed among the districts that they elected only eighteen Congressmen. If the same number of Progressive votes had happened to be distributed among the districts to the best possible advantage, the Progressives would have won a majority of the seats. It is pointed out that neither this result nor that which actually occurred seems fair, and that a system which makes such results possible seems an unstable basis for orderly progress in accordance with the will of the people.

The advocates of proportionate representation further show that the present system may result in the election of a majority of the legislative body by a minority of the voters. In fact, that is what usually happens. The reason why it is not noticed is because usually —not invariably –a majority of the voters agree with the ruling minority.

For example, twenty-six Republican members of the Pennsylvania Senate in office January, 1919, were elected by 350,308 out of a total vote for the whole state of 1,029,208. (These Senators were from Districts 1-8, 10, 12-14, 16, 17, 19, 22, 23, 25, 26, 28, 30, 32-34, 37 and 38.) That is, 52% of the Senate was elected by less than 35% of the voters. If all the other voters, 678,900 in all, had voted the Democratic ticket, the Republicans would still have had a majority in the Senate.

Similarly a Democratic minority of 35% might some time win a majority of seats in the Senate. In fact, if certain Republican voters, numbering less than six per cent. of the total number of voters in the state, had moved to Philadelphia and had helped to swell the Republican majorities there instead of voting elsewhere in the state, the Democrats would have a majority in the present state Senate.

Actual cases in which a minority party has captured a majority of the seats are not hard to find. In the Kansas congressional elections of 1916, for example, the Democrats polled fewer votes than the Republicans but succeeded in electing five of the state's eight Representatives.

Sometimes, it is true, such results may be partly due to the fact that more votes are cast in some districts than in others. But the possibility of such a result is inherent in the present system of electing representatives, even if there are the same number of voters in all the districts. Suppose that the Republicans have won in twenty-three of the fifty Senatorial districts in Pennsylvania with an average majority in each district of 5,000, and that the Democrats have won in twenty-seven with an average majority of 100 in each. Then evidently the Democrats have won a majority of the seats in spite of having cast 112,300 fewer votes than the Republicans.

It is obvious that the chances of this kind of result are likely to be increased where more than two parties are contesting the seats, or where, as at primary elections, there are several contending factions within a party. Combining the possibilities in both elections

it is possible for a small but compact minority of the electroate first to capture the nomination of a large party and then to win in the final election.

The advocates of proportional representation propose a system of voting which is calculated to eliminate what they believe to be the inequalities of the present system, and to make more effective the vote of every elector.

(B) THE PROPORTIONAL SYSTEM.

Proportional representation is a system of voting which enables every united group of voters to win a share of the seats in a representative body in proportion to the vote it polls.

The essential difference between the porportional system and the present system is merely a difference in the character of the constituency or quota which elects each member. Consider the two systems, for example, in connection with the election of the State Senate.

Under the present system the state is divided into fifty districts, equal in population as nearly as may be, and each of the districts elects one Senator. This is just as "proportional" a system, arithmetically speaking, as the very different system which goes by that name, for each fiftieth of the population "elects," in a sense, one of the fifty Senators. But the quota in this case, the fiftieth which elects a Senator, is a quota of people who, though they live together, do not think together. Though they are united geographically inside of an imaginary line on the map, they are not united on any one man for Senator. If, therefore, it is such a quota that must be represented by each Senator, it is obvious that all the voters in each district who do not happen to agree with the largest organized group will not actually be represented.

Under the proportional system the state would be divided into a few much larger districts, each of which would elect several senators. And a system of voting would be used which would give every group

of voters who desired the same man or men for the Senate their proportional share of those elected by the district. It is evident that this would work out in the election of each Senator by about a fiftieth of the population who are united in wanting him as their representative instead of by about a fiftieth who disagree but who happen to live within one of the present districts.

It is maintained by proportionalists that a unanimous-constituency or proportional system carries out the fundamental democratic principles intended as the basis of our state government by those who founded and developed it far better than does the present system of election, which was apparently adopted only because the proportional system was unfamiliar to them: that the purpose of these founders was to give to the electors an equal share in the election of the representative body, and that only the unanimous-constituency or proportional system can accomplish that purpose.

(C) THE PROGRESS OF PROPORTIONAL REPRESENTATION.

The proportional system of electing representatives is used in the following counties and communities:

List System

(Provinces, cantons, and municipalities using proportional representation omitted from this list:)

Servia (1888)

Belgium (1899)

Finland (1906)

Cuba (1908)

Sweden (1909)

Uruguay (1910)

Bulgaria (1911)

Portugal (Lisbon and Oporto—1911)

Costa Rica (1913)

Iceland (1916)

The Netherlands (1917)

Denmark (1918)

Switzerland (1918)

Germany (1918)

Austria (1918)

Armenia (1918)

Czecho-Slovakia (1918)

Poland (1919)

Luxemburg (1919)

Italy (1919)

France (Defective system 1919)

Hare System

Tasmania (1896-Parliament, partial)

Tasmania (1907-Parliament)

So. Africa (1909-Senate and some cities of the Transvaal)

Transvaal (1914-cities)

Ireland (1914-Senate and port of Commons, under "Parliament of Ireland Act.")

Ashtabula, Ohio (1915-Elections in November, odd-numbered years)

New Zealand (1915-Legislative Council. Optional for Cities.)

Sydney, Australia (1916)

Durban, So. Africa (1916)

Calgary, Alberta (1916)

Boulder, Colorado (1917)

British Columbia (1917-Optional for Cities. Since adopted by Vancouver, Victoria, and others)

Kalamazoo, Mich. (1918-Elections in November, odd-numbered years)

Great Britain (1918-Eleven seats in Commons)

Scotland (1918-School Boards)

Sligo, Ireland (1918)

New South Wales (1918-Legislative Assembly)

Ireland (1919-Municipalities. Elections in 126 held on January 15, 1920)

The first of these two groups use the so-called list system of proportional representation for parliamentary elections. It will be noticed that these are all non-English-speaking countries.

The second group, all of which are English-speaking, use the Hare system of proportional representation, which is intended not only to give the right number of seats to each party but also to provide the means by which the voters of each party can exercise, without any primary elections, complete control over the selection of the candidates to fill the seats won by the party. It is also intended to give to independent voters, who wish to cross party lines, the means of making their ballots effective. It is on account of these additional features of the Hare system that it is preferred to the list system by the leading authorities in all English-speaking countries.

Advocates of proportional representation point to its rapid spread among the leading countries of the world as indicated by the dates in the above tables. Twelve countries have adopted it for parliamentary or other important public elections since July, 1919. In this country the proportional system has been adopted by popular vote in three small cities—Ashtabula, Ohio, Boulder, Colorado, and Kalamazoo, Michigan. In Cleveland, Ohio, there is a considerable agitation for its adoption. I am informed that experience shows that the great majority of our citizens are ready to support proportional representation as soon as it is explained to them.

The proportional system is generally supported by leading statesmen of all parties in those countries which have adopted it. In Great Britain, where it has not yet been adopted for general use in parliamentary elections, it is supported by many statesmen of different parties, including the following: the Archbishop of Can-

terbury, A. J. Balfour, H. H. Asquith, Viscount Bryce, the Marquis of Lansdowne, the Earl of Selborne, Lord Robert Cecil, Earl Loeburn, formerly Attorney-General and Lord Chancellor, General Jan. C. Smuts, Sir Horace Plunkett, Visconut Milner, Sir John Simon, Lord Rhondda, Lord Astor, Philip Snowden, and Robert Smillie, President of the Miner's Federation of Great Britain.

In this country, I am informed that the movement is supported by labor organizations and minority parties and by many students, including the directors of various municipal research bureaus, and most of the professors of political science. It has the support of the following well-known men and women:

William Dudley Foulke, Ex-President, National Municipal League;

Charles W. Eliot, LL.D.;

Senator George W. Norris;

John H. Finley, Commissioner of Education of New York State;

Mrs. C. C. Catt, President, National American Woman Suffrage Association;

Henry R. Seager, Ex-President, American Economic Association;

Moorfield Storey, Ex-President, American Bar Association;

Samuel Gompers;

Duncan McDonald, President, Illinois State Federation of Labor;

General E. H. Crowder;

Judge Ben B. Lindsey;

Charles P. Steinmetz;

Alexander Graham Bell;

George A. Eastman;

Charles A. Beard, Director of The Bureau of Municipal Research of New York;

Frederick A. Cleveland, formerly Director of the Bureau of Municipal Research of New York;

Nelson S. Spencer, President of City Club of New York;

Mrs. Raymond Robins, President of National Women's Trade Union League;

James H. Maurer, President of the State Federation of Labor;

John A. Phillips, its vice-President;

Senator Robert L. Owen;

Samuel McCune Lindsay, LL. D., Ex-President of American Academy of Political and Social Science;

George Burnham, Jr., of Philadelphia;

Jeremiah W. Jenks, Professor of Government, New York University;

Richard S. Childs, Founder of the Short Ballot Organization;

Harold S. Buttenheim, Editor-in-Chief of the American City.

The National Municipal League at its last convention went on record in favor of proportional representation for state legislatures by unanimous vote.

In Pennsylvania, the Central Labor Union of Philadelphia, the Permanent Legislative Committee of Nineteen, representing a conference of twenty labor organizations, the Socialist Party and a number of other organizations are recorded as favorable to the system.

(D) THE HARE SYSTEM

The organized supporters of proportional representation urge the Hare system of proportional representation for any Constitutional Convention that may be called and for at least one House of the Legislature.

If the Hare system of proportioal representation were prescribed for the House of Representatives, the state would be divided into districts, larger than the present districts, which would elect several members each. I have annexed to this brief, as Exhibit A, a suggested schedule for such districts, prepared by the American Propor-

tional Representation League. The districts need not be equal in population, because to each district are assigned as many representatives as its population requires. It is considered advisable not to make the districts too large where the population is sparse.

Nominations might be made in the usual way, unless party names were not allowed to be used in connection with them, in which case nominations by petition, without primaries, is preferred by the sponsors of the system. Under the Hare system, it is contended that the method of marking and counting the ballots brings together the votes of like-minded voters more effectively than our present primary elections,—so as not only to elect the right number of each party's candidates, but so as to elect also the strongest candidates of each party, group, or sufficient number of voters, whether organized or not. The omission of party names is suggested as suitable for the election of delegates to a Constitutional Convention and in certain municipal elections.

The ballot used for the election of representatives would be separate from that used for other purposes at the same election. Its form and the method of voting are shown below:

(Heading)

DIRECTIONS TO VOTERS:

Put the figure 1 opposite the name of your first choice. If you want to express also second, third, and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice, and so on. In this way you may express as many choices as you please. *The more choices you express, the surer you are to make your ballot count for one of the candidates you favor.*

This ballot will not be counted for your second choice unless it is found that it cannot help your first; it will not be counted for your third choice unless it is found that it cannot help either your first or your second; etc.

A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another from him.

FOR THE HOUSE OF REPRESENTATIVES

John Allen, Elkins Park, Republican	
John Jones, Bryn Mawr, Labor Party	
James Brown, Bristol, Democrat	
Frank Green, Ardmore, Democrat	
Richard Roe, Doylestown, Republican	
William Hunt, Pottsville, Socialist	
Paul West, Narberth, Republican	
George Sims, Norristown, Democrat	
Thomas York, Quakertown, Republican	

At each voting precinct the ballots cast there are simply sorted according to first choices; then the first choices for each candidate are counted and made up into a package, and all the packages are sent to the central counting place of the entire multi-member district. This presents no difficulties to the precinct election officials.

At the central counting place, to which all the ballots cast in the entire multi-member district are brought, the remaining operations of the count are carried out in accordance with certain rules prescribed by law. A copy of the rules recommended by the American Proportional Representation League is on file in the Secretary's office.

The principles at the basis of the rules are very simple. Every voter's ballot actually counts for one and only one candidate, as it does when one member is elected in each district. And the candidate for whom a ballot counts is the one for whom the voter who marked it wants it to count (as shown by the preferences marked on it), considering how many ballots are found to be required to elect a candidate and how other voters have voted. For example, if five members are being elected in the district, it is evident that any candidate who is the first choice of more than a sixth of the voters of the district is elected; but if any candidate secures more than this number required to elect—the quota, as it is called—the surplus ballots over and above the number needed are passd on to other candidats, each one separately in accordance with the next choice marked on it, because that is the way to make effective the will of each of the voters who cast the surplus ballots. Of course it might possibly make a difference which of a candidate's ballots are taken for transfer as the surplus. The rules must be drawn so as to take care of this situation. After the transfer of the surplus ballots of those candidates who received more than the quota of first choices, the weakest candidates are declared defeated one at a time and the ballots which are counting for thm are transferred, each one separately in

accordance with the preference marked on it, to the candidate most desired by the voter among those *who may be helped to election by his ballot*. In this way the ballots are finally sorted into as many piles as there are members to be elected from the district, each of these piles being made up of ballots representing voters sufficient in number to have a right to one member, and unanimous, considering all the circumstances, in the desire to have their ballots help elect the candidate whom in fact they do help elect. To express it all more briefly, the principle of the system is an attempt to condense all the voters of the district, of varying opinions and interests, into those whom they regard as their truest spokesmen.

It is contended that if the members elected from each of the several multi-member districts represent the district truly, the entire body elected by the state as a whole must represent the state as a whole truly.

Leaflets explaining the Hare system more fully are on file in the Secretary's office.

(E) RESULTS WHERE THE SYSTEM IS USED.

The advocates of the Hare system of proportional representation assert that where it has been used it has resulted in fairness to all political parties and groups of voters within parties; that it has kept in the legislative body the leaders regarded by the different elements as their strongest and most trustworthy spokesmen, and that it has tended to reduce the bitterness of differing parties and groups and to foster the spirit of cooperation for the public welfare.

I have annexed to this brief as Exhibit B statements in regard to the working of the system made by members of the communities which have adopted it. These statements have been furnished to me by the American Proportional Representation League.

(F) ADVANTAGES CLAIMED FOR THE SYSTEM.

Advocates of proportional representation claim for it the following advantages over the usual methods of election:

1. It insures majority rule, which the usual system fails to do.

2. It gives fair representation to all substantial minorities, including some which are entirely excluded from representation by the usual system.

3. It results in the election of the strongest and ablest spokesmen of various groups, many of whom would have no chance of election under the present system because of their inability to secure a plurality vote in the particular districts in which they happen to live.

4. It discourages political corruption by making it impossible to affect the result materially by the manipulation of a few votes.

5. It tends to eliminate "machine control" by making it possible for the voters of a party who disapprove of a machine candidate to nominate or vote for a rival member of the party without splitting the party vote and thereby delivering the seat to some other party. This means not that party organizations would go out of business or that they would no longer count, but only that they would have to conform more closely to the will of the rank and file of the voters. The Hare system actually brings about the popular control of parties which the direct primaries were intended to help in bringing about.

6. It tends to revive interest in political affairs on the part of large numbers of citizens who do not feel that they have the opportunity to elect satisfactory spokesmen under the present system.

7. It tends to preserve continuity in personnel and policies in legislative bodies, avoiding the sudden and complete overturns which often result from the change of a few votes under the usual system.

8. It tends to remove the danger of "direct action" on the part of minorities whom the present system deprives of all expression through political agencies, and, by giving every citizen a satisfactory representation, tends to develop a feeling of cooperation among all groups. Differences remain, but the bitterness caused by injustice and exclusion is removed.

9. It tends to increase the authority of the government. Citizens will be inclined to obey and will not want to overthrow, a government in whose legislative deliberations they all share.

10. The republican form of government by representative legislatures can be perpetuated only if a system is adopted which will make the legislatures truly representative of all the differences in political thought in the Commonwealth. The political complexion of the legislatures must not depend on the accidents of the geographic distribution of the electors. Proportional representation is the only effective answer to those who insist on the initiative and referendum.

In connection with these claims there has been brought to my attention a letter of February 1, 1919, from the Earl of Selborne to the London Times, as follows:

> The last House of Commons rejected Proportional Representation in the Franchise Bill. It is important, I think, that the result should be noted, and what an intimate effect it has had on the industrial problem. At the last General Election the Labour Party polled in contested seats in Great Britain 2,292,102 votes. This poll entitled them to 120 seats in Great Britain in respect of the contested constituencies alone, but the total number of seats they obtained in contested and uncontested constituencies was 47 (evidently a misprint, the number being 59). The result is that the Labour Party know that they are not fairly represented in the House of Commons,

and many of their leaders, whose presence they consider essential to the proper consideration of their business, have failed to obtain seats in the House of Commons. The consequence is that they look less and less to the House of Commons as the place where the questions which interest them can be properly considered and dealt with, and that there is an ever-increasing tendency to deal with these questions outside of Parliament. As the questions at issue are no longer only concerned with wages and conditions of employment, but are strictly political questions, such as whether an industry should be nationalized, and whether it is possible in a civilized country for two Governments to exist side by side, the one representing the whole community, and the other a section of the community, this fact is fraught with danger.

At the next General Election nothing is more probable than that the Unionist Party will poll a sufficient number of votes to entitle them to a representation of 200 or more, but that the number of Unionist members returned will be under 100. Per contra, the Labour Party may receive gross over-representation; but that will be no remedy for past injustice; it will only be an aggravation of the evil.

The following statement by former Mayor C. M. Fassett of Spokane, Washington, in regard to the industrial troubles which are particularly acute in that part of the country, is also of interest:

Just now the labor element is divided and its separated groups are politically ineffective as minorities; but they are beginning to find themselves, and when they realize their power in united action, there will be a bitter repentance on the part of those elements now in political control that proportional representation has not been generally adopted.

(G) THE PRACTICABILITY OF THE SYSTEM.

The objection is sometimes raised that the method of marking a Hare ballot might prove confusing to the voters. I am informed that this is not generally the case. In the Tasmanian provincial elections of May, 1919, there were less invalid ballots under the Hare system than there were in the preceding Commonwealth elections in Tasmania under the old system. In Dublin, Ireland, at the first Hare election on January 15, 1920, the ballots invalid from all causes, some of which had nothing to do with the new system of voting, numbered slightly more than two per cent. of the whole vote.

A dispatch of January 19th to the Philadelphia Evening Bulletin, in regard to the municipal elections held throughout Ireland on January 15th, bears testimony to the practicability of the system from the voters' point of view. It says in part:

> Proportional representation * * * has triumphed. * * * Many thought the system would be too complicated for the average voter. There was also a feeling that there was a catch in it somewhere devised by the reactionaries to defeat the popular will. As a matter of fact the voters found no difficulty in filling up their papers to indicate their preferences nor did any catch develop.

Advocates of proportional representation claim that it makes voting easier rather than harder because the voter does not have to consider the chances of election of any particular candidate, and simply votes his real order of preference, knowing that he is in no danger of throwing his vote away by so doing.

The fear is sometimes expressed that the number of operations involved in the final count make the Hare system impracticable, either on account of the danger of manipulation on the part of the election officials at the central counting place or on account of the difficulty of handling large numbers of ballots. Experience appears to show, however, that there is little cause for fear on either of these grounds.

The danger of manipulation of votes is said to have no support from experience and to be in fact reduced by the Hare system, because each step in the process acts as a partial check on those that have gone before. It would be very difficult for an election official in the presence of watchers to handle a ballot incorrectly and at the same time to make sure that his manipulation did not come to light later on.

The difficulty of handling large numbers of ballots under the Hare system appears to be much less than is usually supposed. In Glasgow, Scotland, last April, 124,000 votes were counted under the Hare system in one day under the supervision of one returning officer. The arrangements made would have sufficed to count a very much larger number of votes. All the school boards in Scotland were elected by the Hare system at the same time without difficulty.

Tasmania has found the Hare system practicable—even in a form more complicated than that used in England or America. It has used the system for all its state parliamentary elections since 1907.

Mr. J. McCarthy, returning officer at the first proportional election of the Council of Sligo, Ireland, bears testimony to the practicability of the Hare system in the following statement:

The experiment of applying the single transferable vote to the municipal elections in Sligo has shown:

1. That voters had no difficulty in grasping what they had to do.

2. In the past, owing to lack of interest on the part of a large number of the electors, the polls were small. In the present instance nearly 80 per cent. of the total register polled.

3. The count is not perceptibly longer than the old method in point of time where 16 candidates are contesting 8 seats.

4. At the count neither the candidates nor their agents had any trouble in following the various steps although it was their first experience of the system. The difficulty of the

count appears much more formidable on paper than in actual practice. A systematic method eliminates the alleged difficulties.

5. So far as these elections are concerned the results have succeeded in making good the claims of the advocates of the system. The rights of majorities were preserved and at the same time representation given to minorities. The various parties got representation in a proportion wonderfully near to their voting strength.

6. The system is a practical one and the results of the election have been received with general satisfaction.

Of the operation of the system in Ireland on January 15th, 1920, the *Irish Times* (Unionist), says editorially in its issue of January 19: "The Irish elections, which the British public and press have followed with keen interest, *established all the virtues that were claimed for this scientific method* of feeling the popular pulse. In the first place, *the mechanism has worked without a hitch.*"

(H) BEARING OF THE PRESENT CONSTITUTION ON PROPORTIONAL REPRESENTATION.

Article II, section 2. "————whenever a vacancy shall occur in either House the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term."

Under a proportional representation system such a provision can be made unnecessary. Vacancies can be filled by another count of the ballots, all of which are preserved until the next election.

Article II, section 16. This section provides for the division of the state into fifty senatorial districts and for the election of one senator from each district.

This of course makes a system of proportional representation impossible so far as the election of senators is concerned, since under that system it is necessary that several persons should be elected in each district.

Article II, section 17. This section provides for the election of representatives and forbids the apportionment of more than four to any one district. Each county is assured at least one representative. The larger counties and cities must be divided into districts.

This makes proportional representation possible where a district is entitled to three or four representatives. Only certain parts of the state, however, could under the present constitution be divided into such districts.

Article II, section 18. This directs the General Assembly to apportion the state into senatorial and representative districts in accordance with the two preceding sections.

Article V, section 11. This section operates, practically, to limit the number of justices of the peace in any one district to two.

Article V, section 12. This provides for one magistrate in Philadelphia for every 30,000 inhabitants, to be elected on general ticket, with a provision for minority representation.

The consequent number of magistrates is sufficient to allow the proportional representation system full play, if it were not precluded by the terms of the section setting forth the manner of election.

Article VIII, section 7. "All laws regulating the holding of elections by the citizens * * * shall be uniform throughout the state."

It seems doubtful whether the General Assembly could, in view of this section, provide for elections by proportional representation in cities only. In the absence of judicial construction, it can be argued that such a system would have to be extended to every election whether state, county, city, township, borough, school district, or poor district, in which enough persons were to be elected to afford any opportunity for its operation.

Under our present Constitution, then, a system of proportional representation is impossible as applied to the election of state Senators, impossible of general application as applied to the election of representatives, and of doubtful validity as applied to local elections.

(1) CONSTITUTIONAL CHANGES SUGGESTED.

If it were desired to prescribe proportional representation for the General Assembly the following amendments would serve the purpose:

(a) Article II, section 2. Strike out the last sentence and substitute the following:

The General Assembly shall provide by law for the filling of vacancies in either house.

(b) Amend Article II, section 16, to read as follows:

The State shall be divided into not more than ten senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator for each ratio, and to an additional senator for a surplus of population exceeding three-fifths of a ratio. No city or county shall be entitled to be represented by more than one-sixth of the whole number of senators. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number fifty.

(c) Amend Article II, section 17, to read as follows:

The State shall be divided into not more than thirty representative districts of compact and contiguous territory. No district shall be created containing less than three two-hundredths of the population of the state as ascertained by the most recent United States census. The members of the House of Representatives shall be apportioned among the several representative districts on a ratio obtained by dividing the population of the state as ascertained by the most recent United States census by two hundred. Each representative district shall be entitled to one representative for each full ratio of its population and no more.

NOTE:—The numbers in this section are suggestive only. For other suggested numbers see Exhibit A.

(d) To Article VIII, section 4, add the following:—

All elections of members of the General Assembly shall be conducted by a system of proportional representation which shall guarantee to each united group of voters in each representative district a representation as nearly as possible in proportion to its voting strength in that district.

If it be desired to enable the General Assembly to provide a system of elections by proportional representation for cities or other political sub-division of a given class or classes, the following amendment would serve the purpose:

Amend Article VIII, section 7, by adding the following:

"*And the General Assembly may prescribe elections by proportional representation for all cities or other political subdivisions of a given class or classes.*"

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

EXHIBIT A.

Suggested Schedule for Election of Pennsylvania House of Representatives or a Constitutional Convention by Proportional Representation.

Congressional Districts	Counties	Population (Census of 1910)	Not apportioned on the basis of one for each two hundredth, as suggested in (I) Representatives
1	Philadelphia (part)	274,960	5
2 & 4	Philadelphia (part)	392,140	8
3	Philadelphia (part)	251,826	5
5	Philadelphia (part)	252,893	5
6	Philadelphia (part)	377,189	7
7 & 9	Chester, Delaware, Lancaster	394,148	8
8	Bucks, Montgomery	246,120	5
10	Lackawanna	259,570	5
11	Luzerne	343,186	7
12 & 16	Schuylkill, Columbia, Montour, Northumberland, Sullivan	393,942	8
13	Berks, Lehigh	302,045	6
14 & 26	Bradford, Susquehanna, Wayne, Wyoming, Carbon, Monroe, Northampton, Pike	348,504	7
15 & 21	Clinton, Lycoming, Potter, Tioga, Cameron, Centre, Clearfield, McKean	377,620	7
17 & 20	Franklin, Fulton, Huntingdon, Juniata, Mifflin, Perry, Snyder, Union, Adams, York	378,489	8
18	Cumberland, Dauphin, Lebanon	250,196	5
19	Bedford, Blair, Cambria..	313,866	6
22	Butler, Westmoreland	303,993	6
23	Fayette, Greene, Somerset	264,048	5
24	Beaver, Lawrence, Washington	292,065	6

25 & 28	Crawford, Erie, Elk, Forest, Mercer, Venango, Warren	396,019	8
27	Armstrong, Clarion, Indiana, Jefferson	233,818	4
29	Allegheny (part)	236,012	4
30	Allegheny (part)	278,397	5
31	Allegheny (part)	204,489	4
32	Allegheny (part)	299,565	6
	Total	7,665,111	
	No. of 4 member districts		3
	No. of 5 member districts		8
	No. of 6 member districts		5
	No. of 7 member districts		4
	No. of 8 member districts		5
			25

EXHIBIT B.

Statements from Committees Using Proportional Representation.

Mr. P. C. Remick, a leading business man of Ashtabula and for three terms President of the Ashtabula Chamber of Commerce, who publicly opposed the adoption of proportional representation:

> * * * We are well pleased with the result. The count of the votes has been easily made and without complication. The result has been a representative council. It has entirely eliminated party politics (the municipal ballot is non-partisan) and control of city affairs by any ring or clique. It gives all groups of voters representation, and after organization in the council they have worked in the utmost harmony.
>
> * * * Ashtabula is well pleased with the charter * * * and would not go back to the old order under any consideration.

Mr. R. H. Pfaff, President and Manager of the Ashtabula Bow and Socket Co. and former Mayor of Ashtabula:

> Not the least of the improvements made by the charter is the abolishing of ward lines in the elections and the election of a council truly representative in character by the method known as the Hare system of proportinal representation.

Mr. W. E. Wenner, Superintendent of Schools in the Harbor District and representative from Ashtabula county in the Legislature:

> It is a privilege to say a word in regard to the city charter of Ashtabula and its successful working.
>
> The simplification of municipal business, the definite placing of responsibility, the speeding up of movements necessary to the good of city government, the practical elimination of politices through the working of the Hare or proportional election system,—these and many other features bear witness to the effectiveness of our charter.

Mr. H. W. Leathi, former President and now Secretary of the Ashtabula Chamber of Commerce, a former opponent of proportional representation:

> The city of Ashtabula has for several years past been operating under a charter and electing a council by the proportional representation method. The result of that experience has demonstrated that this method of election places in the council men representing the larger groups in the city and eliminates many of the abuses that were observed under the old ward plan.

Mr. Raymond Moley, Director the Cleveland Foundation, formerly Professor of Political Science, Western Reserve University::

> There are no life or death struggles for supremacy in the politics of Ashtabula. Proportional representation has ended the division of the voters into two hostile camps through the drawing of artificially created party lines. Minority groups,

if their strength aggregates one-seventh of the votes, can secure representation. If a party should appear which actually amounted to a majority, it would elect a majority of the commissioners. But it could not prevent the election of candidates of the opposition.

The experience with proportional representation in Kalamazoo, where two elections of the Commission have now been held under the Hare system is clearly favorable. The following opinions will be of interest.

Professor Augustus R. Hatton of Western Reserve University, Field Director of the National Short Ballot Organization, writes, after careful personal investigation, in regard to the first proportional election in Kalamazoo, which was held in November, 1917:

> One prominent citizen denounced P. R. as an "un-American" system and declared that if Talbot (a Socialist with a considerable following) should be elected immediate steps would be taken to eliminate proportional representation. In the course of his remarks he indicated seven men, the selection of whom would, in his opinion, give the city the most representative council that could be chosen from the twenty-three candidates. The day after the election, his animus against the system seemed to be considerably less when he discovered that (although Talbot had been successful) six of the seven men whom he had indicated had been elected * * * It becomes more and more evident that each of the various elements of the community feels that it has an official spokesman in the commission. The stabilizing effect which this quiet confidence engenders is already manifest. As a result, many formerly doubtful citizens have changed their minds concerning the system of election.

Harry H. Freeman, the present City Manager of Kalamazoo, describes thus the results of the same election:

> The Commission has worked in perfect harmony and those who were confident that Mr. Talbot would be the "ever-present" objector are aghast at the change. His paper has become a sort of semi-official mouth-piece for the new government, explaining and defending the increase in taxes * * *
>
> Previous to the election one of our most prominent citizens, a man of considerable influence in the community, was quite emphatic in his objection to the proportional representation system. A week after the election he expressed himself as follows: "I say to you frankly and honestly that I have changed my mind about proportional representation and the election. I think now it is a fine thing to have those men in there and if I had (the opportunity) to vote today for proportional representation, I would do it without hesitation."

In July, 1919, Manager Freeman wrote in regard to a rumor that he was advising other cities against adopting proportional representation:

> If I remember rightly I did say a few things about how well the system has worked out here. I cannot possibly imagine how anyone could conceive about my being less enthusiastic about it today than I was three years ago. I have talked it in a great many places.

The annual report of the City of Kalamazoo for the year April, 1918—April, 1919, contains the following statement:

> The Commission has justified one of the greatest claims for the new form of government, namely, that the machinery of government is simplified to the point where able men who desire to give best service to the public do so with the assurance that their efforts will produce results.

Perhaps the most striking results of the Hare system are those exhibited in Ireland, where the Hare system was used in January, 1919, for the election of the Council of the city of Sligo, and there-

after, as a result of the Sligo experience, prescribed by the British Parliament for all Irish local elections.

Following the Sligo election the *Sligo Champion* (Sin Fein) endorsed the system as follows:

> The system has justified its adoption. We saw it work; we saw its simplicity; we saw its unerring honesty to the voter all through; and we saw the result in the final count: and we join in the general expression of those who followed it with an intelligent interest. It is as easy as the old way; it is a big improvement and it is absolutely fair.

On the same day the *Sligo Independent* (Unionist) made the following statement:

> Sligo has the honour of being the first municipality in Ireland to adopt the principle, and everyone agrees that it was a great success.

When, as a result of this agreement, the Hare system had been prescribed for all Irish municipal elections, prominent members of all Irish parties assisted in the campaign of education for the first elections in January. On January 15, 1920, 126 Irish municipalities, including the large cities, elected their councils by the Hare system with complete success. The Philadelphia *Public Ledger* of January 23rd comments thus editorially on the result:

> There is one deeply significant aspect of the Irish municipal election results to which sufficient attention has not been given, either in the cable dispatches reporting them or in the attempts to interpret those results. These particular elections were the first conducted there and on a large scale under the proportional representation plan. And although the system was put into effect without any initial outlay (by the Government) for the education of the people in its operation, it is evident that it has fulfilled every expectation of its friends and advocates. The dispatches comment on the fact that the re-

sults show "neither southern Ireland to be solid Sinn Fein nor northern Ireland solid Unionist." But this is precisely what might have been expected under a plan by which minorities are not totally submerged by the majority vote, but are given representatives in proportion to their votiong strength. This ought to work for better government, a more contented people.

A few more demonstrations like this should break down the barriers of prejudice against "P. R." (the short name for the system commonly used by its advocates) and insure for it a respectful hearing by legislatures and constitution revisers in this country. The plan is based upon justice and sound reason. The results speak for themselves wherever it has been adopted. But the ungrounded fear of complexities that exist only in imagination have thus far tended to close men's ears to arguments in its behalf. So far as the voter is concerned, voting under proportional representation is actually simpler than by the existing ballot; and whatever skill is called for in the computation of results is supplied not by division or precinct election officers, but by boards trained for the work and appointed because of their fitness.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 29

CONSTITUTIONS—METHOD OF CHANGING.

Harrisburg, Pa., April 6, 1920.

Hon. William I. Schaffer,

Chairman.

Dear Sir:—On February 11, 1920, the Committee of the whole adopted a resolution directing the Secretary to submit to the Commission a brief of the methods by which Constitutions have been submitted in the past so that the Commission, and the public generally, may know what the American precedents are. I have also received from individual commissioners requests for information as to methods of Constitutional revision recently adopted in other states, and also inquiries as to the constitutionality of different lines of action which the Commission might recommend the General Assembly to take in reference to the changes recommended by the Commission. As all these questions are related I have embodied such replies as I am able to make in this brief on

METHODS OF CHANGING STATE CONSTITUTIONS.

I shall discuss the subject under the following heads:

I.

Methods used to formulate and adopt the several constitutions of Pennsylvania.

II.

Recent methods used in revising or proposing revisions in the Constitutions of other states.

III.

The different constitutional lines of action which the Commission may recommend the General Assembly to take in reference to the constitutional changes recommended by the Commission.

Under this heading I shall endeavor to answer the following questions:

1. *Has the Legislature the power to pass a law providing for a convention to be elected by the people, without submitting to the people the question of whether or not there shall be a convention?*
2. *Can the question as to whether the convention shall or shall not be called be placed before the electorate at the same time at which delegates to the convention are elected?*
3. *Can the General Assembly provide that the convention may adopt and promulgate a new constitution or an amendment to the present constitution or must the changes made by the convention be submitted to the electorate of the state?*
4. *Can the General Assembly formulate an amendment or a new constitution in the form of an amendment and place the same before the people, in any other manner than that prescribed in Article XVIII?*
5. *If the commission recommend a new constitution will the General Assemblies of 1921 and 1923 have the right to place such new constitution before the electorate in the fall of 1923 as an amendment to the present constitution?*

IV.

The possible forms in which the constitutional changes recommended by the commission may be embodied.

V.

The time which must elapse before a new constitution or amendments to the present constitution can be adopted.

PART I.

METHODS USED TO FORMULATE AND ADOPT THE SEVERAL CONSTITUTIONS OF PENNSYLVANIA.

Four constitutions have been adopted in Pennsylvania which are generally known by the dates of their adoption, namely 1776, 1790, 1838 and 1873.

(1) The Constitution of 1776.

On June 18, 1776, there met at Philadelphia a conference of representatives from the county committees of several of the counties of the province. The conference was called by the Committee of Philadelphia in response to the opinion of those who were dissatisfied with the existing provincial government and desired a new government to support the Continental Congress and independence from Great Britain. The Conference provided by resolution for the election by the people of delegates to a convention "for the express purpose of forming a new government." In order to insure the election of delegates of the popular party the Conference extended the suffrage to every associator of 21 years of age who had lived one year in the province and had paid or been assessed taxes, and restricted it by requiring every person qualified to vote for representatives (that is those previously entitled to vote) to take an oath renouncing allegience to Great Britain and agreeing not to oppose independence. (Conventions of Pennsylvania, 1776, page 35-39. Jameson, Constitutional Conventions, par. 143-4. Ford, Pennsylvania's First Constitution, Pol. Science Quarterly Vol. 1895, page 425, 448).

The Convention elected pursuant to the resolution of the Philadelphia Conference drafted and proclaimed the Constitution of 1776. (Conventions of Pennsylvania, 1776, page 54.) The preamble declares that the representatives of the people proclaimed it the constitution "by virtue of the authority vested in us by our constituents." It also states that it is to "remain in force forever unaltered, except in such articles as shall hereafter, on experience, be found to require

improvement and which shall by the same authority of the people, fairly delegated, *as this frame of government directs,* be amended or improved." The manner directed by the instrument for amendment is found in section 47 which provides for a "Council of Censors," which might be called a convention of delegates to be elected by the people, to amend the Constitution whenever two-thirds of its number deemed it necessary.

(2) The Constitution of 1790.

The Council of Censors provided in the prior Constitution never called a convention. (Jameson, Constitutional Conventions, par. 222). The General Assembly, however, on March 24, 1789, resolved to obtain the sense of their constituents as to the need of doing so. At the next session of the Assembly that body being satisfied from the reports of its members who had mixed with their constituents and from "numerous and respectable" petitions submitted to it that the people desired a convention, provided by resolution on September 15, 1789, for the election of delegates to a convention. The delegates were to be equal in number to and to have the same qualifications as representatives to the Assembly and to be chosen by the same persons. The Convention met and framed a new constitution and in accordance with the resolution of the Assembly published its alterations and adjourned for several months to obtain the sense of their constituents and upon reassembling the convention proclaimed the new instrument to be the Constitution of the Commonwealth. (Conventions of Pennsylvania, 1790, pages 129, 133, 242, 247; 3 Smith's Laws XXXV.)

In 1825 the General Assembly submitted to the electors the question whether or not there should be a Constitutional Convention (Act of March 28, 1825, P. L. 129). The question was answered in the negative by a large majority. (H. M. Jenkins, Penna. Colonial and Federal Vol. II, page 237.)

(3) The Constitution of 1838.

The Constitution of 1790 contained no provision for amendments. The General Assembly, however, by the Act of April 14, 1835, P. L. 270, provided for an election "to ascertain the sense of the citizens of the Commonwealth on the expediency of calling a convention of delegates to be elected by the people, with authority to submit amendments of the State Constitution to a vote of the people." The vote being in favor of a convention, the General Assembly by the Act of March 29, 1836, (I Debates of Convention of 1837m page iv) provided for an election of delegates. The Convention which was to consist of the same number of members as the General Assembly and apportioned in the same manner was given power to submit "amendments to the Constitution" to a vote of the people, and for this purpose to issue a writ for an election to be held in accordance with the laws relating to general elections.

The changes recommended by the Convention were submitted to the electorate as an amended constitution for which but one vote was to be cast and was ratified in October, 1838, by vote of 113,971 to 112,759. (Debates Convention of 1837, Vol. 13, pages 230, 260; Smull's Legislative Handbook 1915, page 305).

This Constitution contained a provision (Article X) for its amendment substantially similar to that contained in the present Constitution, namely that proposed amendments after having been passed at two sessions of the General Assembly should be submitted to the people at an election. In accordance with Article X amendments were adopted in 1850, 1857, 1864 and 1872. (Buckalew Constitution of Pennsylvania, page xi).

(4) The Constitution of 1873.

The procedure followed was similar to that by which the Constitution of 1838 was adopted. The General Assembly by the Act of June 2, 1871, P. L. 282, provided "That the question of calling a Convention to Amend the Constitution of the Commonwealth be sub-

mitted to a vote of the people," at a general election. The election was "For a Convention" or "Against a Convention." The vote being in the affirmative the General Assembly by the Act of April 11, 1872, P. L. 53, provided for an election of delegates and fixed the powers of the Convention. According to this act the Convention was to consist of 133 members of which 28 were to be elected in the State at large. Each elector was to vote for not more than 14 of these 28. Three additional delegates were to be elected from each senatorial district, but an elector was to vote for not more than two of the district candidates except in the counties of Philadelphia, Allegheny and three others where a large number were to be elected (Section 1). The Convention so elected had power to propose a new Constitution or amendments to the existing one. It was provided that one-third of all the members of the Convention should have the right to require the separate submission to popular vote of any change proposed. The Convention was not authorized to change the "declaration of rights or to submit any proposition for the establishment of a court with exclusive equity jurisdiction" (Section 4). The election for ratification or rejection was to be conducted as a general election (Section 6).

As with the Constitutions of 1790 and 1838 the draft prepared by the Convention of 1873 contained a schedule for carrying the new instrument into effect. In addition the Convention enacted an ordinance "for submitting the amended constitution to a vote of the qualified electors." This ordinance fixed the date of the election and provided for the manner of conducting it, in accordance with the Act of 1872 except that for the county of Philadelphia it was provided that the election should be conducted by a committee selected by the Convention.

In Wells vs. Bain, 75 Pa. 39, the Supreme Court held that the powers of the Convention were limited by the act of 1872 and that as the provisions of the ordinance relating to Philadelphia were in

excess of the power given in the Act those provisions were void and an injunction was granted restraining the members of the Committee from acting. It was also charged that one-third of the members of the Convention had required the separate submission of Article V relating to the Judiciary, but the Court held that it was not competent to inquire into that matter.

In this connection it may also be noticed that contrary to the provisions of the Act of 1872, the Convention did change the bill of rights. Its authority to do so was attacked in Wood's Appeal, 75 Pa. 59, but upheld by the lower court. The opinion of the Supreme Court indicates that it would have taken a different view but the constitution having been ratified prior to its decision the decree was affirmed and the changes have never since been questioned.

The Constitution was adopted by the electorate on December 16, 1863, by a vote of 253,744 to 108,594, and proclaimed by the Governor on Jan. 7, 1894 (Buckalew, Constitution of Pennsylvania, page 320). All amendments to the present Constitution have been made in accordance with Article XVIII relating to amendments. The General Assembly by the Act of May 14, 1874, P. L. 157, provided for a commission of seven persons to be appointed by the Governor, to prepare and submit to the next session of the legislature any amendments to the Constitution that they thought necessary. The General Assembly, however, proposed no amendments to the Constitution either at the session of 1875 nor at that of 1876.

(5) Attempt to Revise Constitution in 1891.

To complete the record of constitutional revision in Pennsylvania reference must be made to the vote of the electorate in 1891. The General Assembly by the Act of June 19, 1891, P. L. 345, provided that at the general election in November, 1891, the electorate should vote for or aganist a constitutional convention and at the same time elect delegates whose election should only be effective in the event of the

vote being for a convention. The election resulted in a rejection of the proposal by a vote of 173,813 for the convention and 420,598 against it. (Smull's Legislative Handbook for 1893, page 481.)

(6) Summary.

The foregoing paragraphs may be briefly summarized. All four constitutions were drafted by Conventions of delegates chosen by the electors. The first two, namely 1776 and 1790 were promulgated and adopted by the Conventions; the last two, 1838 and 1874 were submitted to the electorate. The method followed in the case of 1838 and 1874 was first an act of the General Assembly providing for a vote of the people for or against a convention and then (and this applies equally to the Constitution of 1790), an act of the General Assembly providing for a Convention. All other changes of a constitutional nature have been made under the Constitutions of 1838 and 1874 in the manner provided for in those instruments which include proposal by two successive general assemblies and ratification by the electorate.

PART II.

Recent Methods Used in Revising or Proposing Revisions to the Constitutions of Other States.

In dealing with this subject I shall confine myself to the period from January 1, 1911, to December 31, 1919.

1. ARIZONA. In 1911 a convention composed of delegates elected pursuant to an act of Congress submitted to the electors a constitution which was ratified as a whole on February 9th by a vote of 121,187 for and 3,822 against (Kettleborough, State Constitutions, note to Constitution of Arizona.)
2. ARKANSAS. In 1917 the legislature without first submitting the question to the electorate provided for a convention and the election of delegates thereto. The Convention met and submitted in December, 1918 a new constitution which was rejected by a vote of 23,820 for and 37,184 against.

3. CALIFORNIA. In 1914 a legislative proposal for a convention was rejected by a vote of 180,111 for and 442,687 against.

   The legislature in 1919 proposed an Amendment to Article XVIII, section 2, of the Constitution relating to calling Conventions, and provided that the adoption by the electors of that amendment should be deemed an instruction to the legislature at its next session to call a Convention. The election is to be held in 1920.

4. COLORADO. In 1916 a legislative proposal for a convention was defeated by a vote of 53,530 for and 69,579 against.

5. IDAHO. A legislative proposal was submitted to the electors in November, 1918 and defeated by a vote of 16,442 for and 36,351 against.

6. ILLINOIS. A legislative proposal for a convention was adopted by the electorate on November 5, 1918, by a vote of 562,012 for and 162,202 against. The convention is now in session and has not yet (March 5, 1920) agreed upon any recommendations. (Telegram from the Secretary of State of Illinois, March 5, 1920).

7. INDIANA. The legislature in 1911 passed an act providing for an entirely new instrument which was to be the State Constitution when ratified by the electorate. The Supreme Court of the State, however, in the case of Ellingham vs. Doyle, 178 Ind. 336 (1912) held that the act was void because if it was to amend the existing constitution it did not comply with the provision for amendment contained therein, and if it was for a new constitution it was in excess of the powers of the legislature. In 1913 the legislature provided for submitting to the electors a proposal for a convention. At the election in 1914 the proposal was rejected by a vote of 235,140 to 338,947. Without again submitting the preliminary question to the electors, the legislature in 1917

passed an act for the election of delegates to a convention. The validity of this act was brought before the Supreme Court prior to the date of election and declared void because the legislature had no authority to call a convention without obtaining the consent of the electors.

8. LOUISIANA. In 1913 there was submitted to the electorate a legislative proposal for a convention which was to have power only to provide for funding the State debt and to adopt such amendments as it should deem necessary for that purpose. The proposal was adopted, the convention met, and adopted the contemplated amendment to the Constitution. Two years later the legislature submitted a proposal for a general constitutional convention which was rejected by a vote of 29,711 for and 35,796 against.

9. MASSACHUSETTS. A legislative proposal for a convention was adopted in 1916 by a vote of 217,293 for and 120,979 against. Delegates were elected and the Convention at the end of its first session submitted three amendments as follows:

1. Prohibiting the use of public funds for support of sectarian institutions. Adopted 206,329 to 130,357.

2. Authorizing the legislature to provide for supplying necessaries by State, cities and towns in time of war and emergency. Adopted 261,119 to 51,826.

3. To authorize the legislature to provide for absentee voting. Adopted 231,915 to 76,709.

The following year the same convention submitted 19 further amendments, each voted on separately and adopted as follows:

1. Initiative and Referendum. Adopted 170,646 to 162,103.

2. Conservation of Natural Resources. Adopted 172,111 to 102,768.

3. Regulation of advertising in public places. Adopted 193,925 to 84,127.

4. Preservation of historical property. Adopted 183,265 to 81,933.

5. Adjournments of General Court. Adopted 147,104 to 100,552.

6. Appointment and Removal of Naval and Military Officers. Adopted 155,649 to 91,686.

7. Powers of Governor as Commander in Chief. Adopted 155.114 to 84,822.

8. Filling vacancies in the office of Governor and Lieutenant Governor. Adopted 172,125 to 78,245.

9. Return of bills by Governor with recommendations for amendment. Adopted 164,499 to 76,972.

10. Women eligible for notaries public. Adopted 153,315 to 105,591.

11. Retirement of judicial officers. Adopted 156,796 to 86,023.

12. Granting of charters of incorporation made revocable and subject to amendment. Adopted 161,833 to 79,787.

13. General Court may establish building zones in cities. Adopted 161,214 to 83,095.

14. Compulsory voting. Adopted 134,138 to 128,403.

15. Prohibiting the lending of public money to private corporations. Adopted 153,972 to 90 233.

16. Budget system. Adopted 155,738 to 81,302.

17. Biennial elections for state officers, senators and representatives. Adopted 142,868 to 108,588.

18. Appointment of members of the General Court to office and service upon recess committees. Adopted 152,800 to 87,009.

19. Reorganizing the executive and administrative work of the state. Adopted 158,394 to 81,586.

On November 4, 1919, there was submitted by the Convention to the electors a new text of the Constitution, which consisted of a rearrangement of the previous instrument with its amendments. It was adopted as a whole by a vote of 263,359 to 64,978.

10. NEBRASKA. A legislative proposal for a convention was adopted by the electorate in 1918 by a vote of 121,830 for and 44,491 against. Delegates have been elected and at the present time (March 5, 1920) the Convention is still in session.

11. NEW HAMPSHIRE. In 1911 the electorate adopted a legislative proposal for a convention, delegates were elected and in 1912 submitted 12 amendments each of which was voted on separately. The Constitution required a two-thirds majority for adoption. Four of the amendments only were adopted. The vote on each was as follows:

1. Increasing the senate and dividing state into senatorial districts. Defeated 19,443 for; 13,931 against.

2. Regarding ratio of inhabitants to state representatives. Defeated 21,399 for; 10,952 against.

3. Special taxation of wood, money, income from foreign corporations, etc. Defeated 25,108 for; 12,636 against.

4. Graded inheritance taxes. Defeated 18,432 for; 9,699 against.

5. Tax on incomes of public service corporations and voluntary associations. Defeated 19,200 for; 10,151 against.

6. Amending the bill of rights by striking out "right grounded on evengelical principles" and "Protestant." Defeated, 16,555 for; 14,315 against.

7. No person to vote who shall have been convicted of treason, bribery, or wilful violation of election laws giving the right to the Supreme Court to restore such privileges. Adopted 22,383 for; 8,322 against.

8. Governor, councillors and senators to be elected by a plurality instead of a majority. Adopted 21,120 for; 9,801 against.

9. Amending the Bill of Rights by striking out the provision that pensions shall not be granted for more than one year at a time. Defeated, 16,708 for; 11,440 against.

10. Empowering the legislature to give police courts jurisdiction to try and determine, subject to appeal and trial by jury, criminal causes wherein the punishment is less than imprisonment in the state prison. Adopted 18,608 for; 8,291 against.

11. Requiring that the legislature in dividing the state into councillor districts shall be governed by the population. Adopted 19,196 for; 6,901 against.

12. Giving the Governor authority to approve or disapprove any separate appropriation contained in any bill or resolution. Defeated 17,942 for; 9,325 against.

In 1916 another legislative proposal for a convention was adopted by a vote of 21,589 for and 14,525 against. The convention has met and formulated seven separate amendments which will be submitted to the electors at the November election (Telegram from Secretary of State of New Hampshire, March 5, 1920.)

12. NEW MEXICO. The Constitution framed by the Convention of delegates elected pursuant to an act of Congress was submitted as a whole to the electors of the territory in 1911 and adopted by a vote of 31,742 for and 13,399 against.

13. NEW YORK. A legislative proposal for a convention was adopted in 1914 by a vote of 153,322 for and 151, 969 against. The following year the Convention submitted its recommendations in three questions. All were rejected. The vote on each question was as follows:

1. Shall all of the revised constitution submitted by the Constitutional Convention not included in questions 2 and 3 be approved. For 400 423; against 910,462.

2. Shall the proposed amendments submitted by the Constitutional Convention to sections 2, 3, 4 and 5 of Article III relating to legislative apportionment be approved? For 371,588; against 891,331.

3. Shall the new Article X submitted by the Constitutional Convention relating to taxation be approved? For 346 922; against 924,571.

The next year, 1916, the legislature submitted another proposal for a convention which was rejected by a vote of 506,563 for and 658,269 against.

14. NORTH CAROLINA. A legislative proposal for a convention was rejected by the electorate in 1918.

15. OHIO. The electorate in 1910 adopted a legislative proposal for a convention. A convention met and submitted 41 amendments, each of which were voted on separately. Thirty-three were adopted; eight were rejected. The vote on each was as follows:

1. For verdict by three-fourths of the jury in civil cases. Adopted 345,686 to 203,953.

2. Abolishing the death penalty. Defeated 258,706 to 303,246.

3. For taking depositions and allowing counsel and the court to comment on, and the jury to consider, the fact that the accused did not testify. Adopted 291,717 to 227,547.

4. The State may be sued as provided by law. Adopted 306,764 to 216,634.

5. The amount recoverable for death in negligence cases shall not be limited by law. Adopted 355,605 to 195,216.

6. Initiative and Referendum. Adopted 312,692 to 231,312.

7. To authorize the legislature to enforce attendance of witnesses. Adopted 348,779 to 175,337.

8. Passing bills over Governor's veto by a three-fifths vote instead of a two-thirds vote. Adopted 282,412 to 254,186.

9. For mechanic's liens. Adopted 278,582 to 242,385.

10. Laws may be passed limiting the hours of labor. Adopted 353,588 to 189,728.

11. Compulsory state insurance for workmen. Adopted 321,558 to 211,772.

12. Forestry and preservation of natural resources. Adopted 318,192 to 191,893.

13. Eight hour day and 48 hour week in public work. Adopted 333,307 to 232,898.

14. Removal of public officers. Adopted 347,333 to 185,981.

15. Laws may be passed regulating expert testimony, in criminal cases. Adopted 336,987 to 185,408.

16. Legislature may provide for registering land titles. Adopted 346,373 to 171,807.

17. Prohibiting contract labor and requiring prison made goods to be marked "Prison made." Adopted 333,-034 to 215,208.

18. Limiting a special session of the legislature to the subject of the call. Adopted 319,100 to 192,130.

19. Creating Courts of appeals; increasing the number of Supreme Court judges from 6 to 7; creating the office of Chief Justice to be elected by the people; providing for "one trial and one review" except in Chancery cases. Adopted 264,922 to 244,375.

20. Abolishing the common pleas and giving each county at least one resident judge. Adopted 301,891 to 223,287.

21. Eliminating jurisdiction of justices of the peace in townships having municipal courts. Adopted 264,832 to 252,936. (Adoption of other judicial changes makes this last amendment of no effect.)

22. No injunctions shall be issued in labor disputes except to protect life and property; and contempt cases to be tried by a jury. Defeated 240,896 to 257,302.

23. Woman Suffrage. Defeated 249,420 to 336,875.

24. Making negro suffrage constitutional. Defeated 242,735 to 265,693.

25. Voting machines. Defeated 242,342 to 288,652.

26. Direct primaries and election of United States Senators by direct vote of people. Adopted 349,801 to 183,112.

27. New school system. Adopted 298,460 to 213,337.

28. Creating the office of Superintendent of Public Instruction. Adopted 256,615 to 251,946.

29. Permitting legislature to issue bonds for roads. Defeated 272,564 to 274,582.

30. Public buildings may be insured in mutual insurance companies. Adopted 321,388 to 196,628.

31. Abolishing the Board of Public Works and providing for a Superintendent appointed by the Governor. Adopted 296,635 to 214,829.

32. Continuing the present system of uniform rule in taxation; restoring future issues of bonds to taxation; and taxing incomes and inheritances. Adopted 269,239 to 249,864.

33. Regulation of corporations and the sale of stocks and bonds. Adopted 300,466 to 212,704.

34. Stockholders of banks to be liable to double the amount of the par value of their stock. Adopted 377,276 to 156,688.

35. State to do its own printing or to let it to the lowest bidder. Adopted 319,622 to 192,378.

36. Women may be appointed to situations involving the interests and care of women and children. Defeated 261,806 to 284,370.

37. Compulsory civil service in State, city and county. Adopted 306,767 to 204,580.

38. The legislature may regulate the use of bill boards. Defeated 261,361 to 262,440.

39. Majority voting on constitutional amendments shall be sufficient to carry the same. Adopted 271,827 to 246,687.

40. Home rule for municipalities. Adopted 301,861 to 215,120.

41. The establishment of a license system for the sale of liquor. Adopted 272,361 to 188,828.

16. SOUTH DAKOTA. A legislative proposal for a convention was rejected by the electors by a vote of 34,832 to 51,585 in 1915.

17. TENNESSEE. Three legislative proposals for conventions have been rejected by the electors, the first in 1916 by a vote of 43,940 for and 67,336 against; the second in 1917; the third in 1920 by a vote of 8,092 for and 41,426 against (Telegram from Secretary of State, March 12, 1920).

18. TEXAS. A legislative proposal for a convention was submitted in November, 1919 and rejected by a vote of 23,549 to 71,376.

19. VERMONT. A commission has been appointed by the Governor to submit proposals for amendments to the legislature in 1921.

20. WASHINGTON. A legislative proposal for a convention was rejected by a vote of 55,148 for and 58,713 against in 1918.

(The foregoing information, except where otherwise stated, was obtained from the American Year Book, (D. Appleton & Co.) for 1911-1918, and from information furnished by the editor for the year 1919).

PART III.

The Different Constitutional Lines of Action which the Commission May Recommend the General Assembly to Take in Reference to the Constitutional Changes Recommended by the Commission.

Article XVIII of the present Constitution expressly provides a method of amendment. An amendment adopted by two successive legislatures and subsequently by a majority of the electors of the state voting thereon becomes part of the Constitution. Whether a complete revision of the entire constitution can be adopted as a single amendment or a series of amendments under this article is a question which I shall discuss later.

The present Constitution, like its predecessors, makes no express provision for calling a convention to revise the Constitution or for

any other method of changing the Constitution except that set forth in Article XVIII. But the second section of the Declaration of Rights (Article I.) provides:

> "All power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their form of government in such manner as they may think proper."

This is not an invitation to those dissatisfied with the existing fundamental taw to foment revolution, nor is it an empty declaration of rights which there are no constitutional means of enforcing. The power to change the form of government does exist in the people taken as a whole. But if they would act in a constitutional and not a revolutionary manner then they must exercise that power by means of a law.

At the present time a constitution and a government formed under it does exist. The law making power has by the people been vested in the General Assembly. That body is the only law making body now existing. Its powers are limited. Existing under and by virtue of the Constitution it cannot make a law contrary to the Constitution. Apart from this restriction, however, the people have vested in the General Assembly all their law making power. It follows, therefore, that the General Assembly, and only the General Assembly, may provide by law a method by which the people as a whole may constitutionally exercise their power to formulate and adopt a new Constitution or make any lesser change therein in a manner other that that prescribed in Article XVIII.

In Wells v. Bain (75 Pa. 39, 49) the late Chief Justice Agnew in a most carefully reasoned Judicial opinion on methods of changing State Constitutions, says:

> "It follows, therefore, that in a state of peace a law is the only means by which the will of the people can be collected in an authorized form, and the powers of the people can be delegated to the agents who compose the convention. The form of the law is immaterial in this question of derivative authority. It may be a law to confer general authority or one to confer special authority. It may be an invitation in the first place, as was the Act of 1789, under which the convention of 1790 was convened, and an authority to the people to meet in primary assemblies to select delegates and confer on them unrestricted powers; or it may be a law to take the sense of the people on the question of calling a convention, and then a law to make the call and confer the powers the people intend to confer upon their agents. The power to pass the law carries with it of necessity that to frame and declare the terms of the law."

It was under this power that the convention which framed the Constitution of Pennsylvania of 1790, 1838, 1874, met. None of our constitutions have contained provisions for revisions by conventions, except that of 1776 which provided for a convention to be called by a "council of censors." This method, however, as we have seen was not the one followed in obtaining the Constitution of 1790. Neither does Article XVIII of the existing constitution impliedly prevent a change through the machinery of a constitutional convention. The Constitution of 1838 had a provision for amendment similar to that in the present Constitution, yet the right of the General Assembly to provide for the election of a Constitutional Convention was not attacked in 1872 when the Act to elect members of the Convention which drafted our present Constitution was passed.

The precedents in Pennsylvania that the General Assembly may provide by law for a constitutional convention without any express constitutional authority is in accord with the well established precedents in other states.

Jameson (Constitutional Conventions, page 210) who wrote in 1887 gives a list of 27 states in which conventions were held under acts of legislatures, though the existing constitutions contained no provisions therefor, to which list may be added Mississippi in 1890, Louisiana in 1898, and Connecticut in 1902. (Dodd Revision of State Constitutions). The sole exception to the rule that the legislature has such a right is found in the Opinion of the Justices in Rhode Island (14 R. I. 649, 1883) in which they held that a convention could not be called in that state because the constitution made no provision therefor. (Hoar, Constitutional Conventions, page 14).

It follows that although there is no express provision in the Constitution of Pennsylvania authorizing the General Assembly to provide for a convention of delegates to be elected by the people to revise the Constitution, or draft a new Constitution, that both constitutional theory and precedents here and in other states maintain the proposition that:

> *The General Assembly may by law provide for the election by the people of the members of a constitutional convention vested with the power to formulate a new constitution or any lessor constitutional change.*

In the carrying out the convention method of changing the Constitution, certain questions arise which I shall proceed to state and endeavor to answer.

Question I.

> *Has the Legislature the Power to Pass a Law Providing for a Convention to be Elected by the People, Without Submitting to the People the Question of Whether or Not there Shall be a Convention?*

In this state the General Assembly prior to providing for the election of delegates to the Convention that framed the Constitution of 1790, obtained the wishes of the electorate by means of the members mixing with their constituents and receiving petitions from them.

In 1825 the General Assembly submitted the question of having a Convention to the people (Act of March 28, 1825 P. L. 129), and the question was likewise submitted prior to providing for the conventions that framed the constitutions of 1838 and 1873. In 1891 the question was again submitted and its rejection rendered null the election of delegates chosen at the same time.

Turning from Pennsylvania practice to the opinion of a Pennsylvania judge, we find Chief Justice Agnew in the part of his opinion in Wells v. Bain, which I have already quoted, saying:

"* * * the powers of the people can be delegated to the agents who compose the Convention. The form of the law is immaterial. * * * It may be an invitation in the first place as was the Act of 1789 under which the Convention of 1790 was convened, and an authority to the people to meet in primary assemblies to select delegates * * *; or it may be a law to take the sense of the people on the question of calling a convention. * * * The power to pass the law carries with it of necessity that to frame and declare the terms of the law." Here we have not, indeed, a decision, but an expression in a most carefully prepared opinion by an authority of weight that the General Assembly has the power to provide for the election of delegates to a Constitutional Convention without first submitting the question whether there shall or shall not be a convention to the vote of the people. There is no direct Judicial ruling on the question in this state, and, so far as I have ascertained, no other expression of Judicial opinion in this state.

The exact question however was passed upon by the Supreme Court of Indiana in 1917 in the case of Bennett v. Jackson (186 Ind. 533). The question of having a convention had not been submitted to the people of the state since 1914, when it was answered in the negative. The Court held the act providing for the election of delegates unconstitutional on the ground that the legislature had no authority to call a convention without the expressed consent of the

electorate and that its last recorded vote, namely in 1914 was against having a convention. The Indiana Constitution like that of Pennsylvania contained no provision whatever for calling Conventions. The Court bases its opinion on the ground that it is "an almost universal custom in all of the states of the Union" to submit the question of a convention to the electorate.

In State vs. Dahl, 6 N. D. 81 1896, the Supreme Court of North Dakota was asked to declare void a resolution of the legislature providing for the submission to the electorate of the question of calling a convention; on the ground, among others, that it was a useless and unnecessary act. In upholding the propriety of the resolution the Court quoted with approval the following language from the council of review of New York in returning to the assembly in 1820 a bill calling a convention:

> "The council therefore think it the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the constitution, that the question of a general revision of it should be submitted to the people in the first instance, to determine whether a convention ought to be convened. The declared sense of the American people throughout the United States on this very point cannot but be received with great respect and reverence; and it appears to be the almost universal will, expressed in their constitutional charters, that conventions to alter the constitution shall not be called at the instance of the legislature without the previous sanction of the people, by whom those constitutions were ordained."

With regard to the precedents Dodd (The Revision and Amendment of State Constitutions, page 47) gives the following list of cases in which the question of holding a convention was submitted to the electorate:

Massachusetts..... 1820, 1852;
New York..... 1821, 1845;
Virginia..... 1829, 1850;
Maryland..... 1850;
North Carolina... 1835;
Pennsylvania..... 1835, 1871;
Missouri..... 1853, 1898;
Louisiana..... 1853, 1898;
Tennessee..... 1869;
Texas..... 1875;
Connecticut..... 1902.

Since January 1, 1911, the question has been submitted in the following cases:

California..... 1914, rejected; to be submitted again in 1920;
Colorado..... rejected in 1916;
Idaho..... rejected in 1918;
Illinois..... adopted in 1918;
Indiana..... rejected in 1914;
Louisiana..... rejected in 1915;
Massachusetts. adopted in 1916;
Nebraska..... adopted in 1918;
New Hampshire adopted in 1911 and again in 1916;
New York..... adopted in 1914 and rejected in 1916;
North Carolina rejected in 1918;
Ohio..... adopted in 1910;
South Dakota. rejected in
Tennessee..... rejected in 1916 and 1917 and adopted in 1920 (?)
Texas..... rejected in 1919;
Washington... rejected in

In some of these cases the question was submitted because the constitution expressly required it. At the present time the following thirty-four constitutions require submission of the question:

Alabama
Arizona
California
Colorado
Delaware
Florida
Idaho
Illinois
Iowa
Kansas
Kentucky
Maryland
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Mexico
New Hampshire
New York
North Carolina
Ohio
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Utah

Washington
West Virginia
Wisconsin
Wyoming
Virginia

(Index Digest of Constitutions, pages 22-23).

The author of the most recent work on Constitutional Conventions after reviewing the authorities concludes that "the practice of obtaining the popular approval for the calling of a convention may be said to have become almost the settled rule." (Hoar, Constitutional Conventions, page 60).

On the other hand, while there is no direct Judicial authority holding that the question of convention or no convention need not be submitted, there is judicial acquiescense in the results of conventions called without the submission of the question to the people. Several of the earlier and two of the most recent state conventions have had no other prior sanction for their being than an Act of the State legislature. The following conventions were called without the electorate first voting on the preliminary question of the need of a convention:

New York..... 1801;
Connecticut..... 1818;
Rhode Island... 1824, 1834, 1841 and 1842;
New Jersey..... 1844;
North Carolina.. 1876;
Louisiana..... 1879;
Mississippi..... 1890.

To this list may be added a majority of the secession and reconstruction conventions. It should be noted that the conventions in Connecticut and Rhode Island were called by charter legislatures with wide powers. (Hoar, Constitutional Conventions, page 66) and that Connecticut submitted the question of calling a Convention to

the electorate in 1902, that Louisiana did the same in 1853, 1898, and 1915, and that New York and North Carolina are now obliged to do so by their constitutions. The present Constitutions of Maine and Georgia, however, expressly authorize the legislature to call conventions without submitting the question of a convention to the electorate. (Index Digest, page 21).

In Arkansas (The Constitution of which contains no provisions relating to the manner of calling conventions) the legislature in 1917 provided for a convention without submitting the question of the need therefor to the electorate. The legislative act was apparently not attacked in the courts. The Convention met and submitted a new Constitution, which was, however, rejected in the election of 1918. In Louisiana the legislature in 1913 without submitting the question to the people authorized the election of delegates to a convention to formulate and promulgate without submission to the people amendments dealing with sewers and the state debt. The convention itself adopted amendments relating not only to these but to other subjects. The amendments were held valid however only in so far as they accorded with the act defining the powers of the convention (State vs. American Sugar Ref. Co. 137 La. 407, 1915). The question of the legality of the convention itself was not raised. In 1915, however, the question of a Constitutional Convention for general revision was submitted as it had been in 1853 and 1878. It is therefore fair to say that the practice in Louisiana at least in so far as a general revision of the constitution is concerned is in line with that of the majority of the states.

In view of this confusion of precedent and judicial decision, all that can be said is that the almost universal modern practice is for the legislature to submit the question of calling a Convention to the people.

If we turn from custom and judicial decision to constitutional theory, we find an equal difficulty in coming to a positive conclusion. The constitutional argument in favor of requiring a prior submission of the question of calling a convention to the electorate may be stated as follows: The people have an inalienable right to adopt a new Constitution. The legislature is the only body to enact a law providing the machinery by which this power may be exercised. But the machinery provided by the legislature must be such as to adequately enable the people to express their will to delegate their power to formulate a new constitution to an elected convention. To merely put before an elector the alternative of voting for a member of a convention who is to exercise for him the power of making a constitution, or of staying at home and permiting his neighbors to select the delegates without his help, is not enough. The electorate as a whole and each member thereof should have the power to pass on the question whether any delegation of the reserved power to alter or amend the Constitution should take place.

The reasons just stated for requiring the prior submission of the question of a convention either do or do not appeal. The whole question is one of the degree in which the legislature may assume to act as the agents of the people authorized to determine whether or not the time has come when the people should delegate their power to change the fundamental law of the state to a convention of elected delegates.

While, however, a positive answer cannot be given to the question asked in view of conflicting precedent and practice, and the inability to express a constitutional theory which decides the point and which is sure to meet universal acceptance, there is apparently no doubt that in view of the very conflict on the question, *it would not be the part of wisdom for the General Assembly in this state to call a constitutional convention to pass on the changes recommended by this commission without first placing before the electorate of the state*

the question whether the convention should be called. What has been shown to be the general, nay, almost universal practice, adds great weight to this conclusion.

From the information contained in Part II of this brief we find that from January 1, 1911 to December 31, 1919, twenty legislative proposals for a constitutional convention were submitted to the people of the various states and of these thirteen were rejected and only seven approved. If in the thirteen cases where the proposals were rejected the majority of the electors who felt that no constitutional changes were necessary had had to wait to register their opinion until after the delegates had been elected, the convention had met and submitted its recommendations at another election, large sums of public moneys would have been expended for no useful purpose.

Question II.

Can the Question as to Whether the Convention Shall or Shall Not be Called be Placed Before the Electorate at the Same Time at Which Delegates to the Convention are Elected?

There are precedents for such a course. As I have already pointed out (Part 1 Supra) the Act of June 19, 1891, P. L. 345, provided that at the general election in November the electorate should vote for or against a Constitutional Convention and at the same time elect delegates. The delegates were elected, but the majority against calling the Convention was nearly 250,000 in a vote of 600,000.

The legislature of North Carolina passed a similar act on February 26, 1917, which provided that at the general election to be held in 1918 the electorate of that state should vote for or against a convention and at the same time for delegates to a convention whose powers and duties were set forth in the act.

The only argument that has been called to my attention against the legality of asking the electorate to pass on the question of a Convention at the same time that they elect delegates thereto is that the election of delegates involves the expenditure of public money

in printing ballots, and if there is a primary election still other expense, all of which are useless under the terms of the Act if the people vote against the Convention. It may be where there is a desire to have the Convention called without delay that combining the two subjects will save the very considerable expense of a separate election. If this can be shown the argument that the expenditure of public money should not be made because it might be useless, would lose much of whatever force it may otherwise possess.

Question III.

Can the General Assembly Provide that the Convention May Adopt and Promulagte a New Constitution or an Amendment to the Present Constitution or Must the Changes Made by the Convention be Submitted to the Electorate of the State?

The question is an academic rather than a practical one. Though, as we have seen, the Constitution of 1776 and 1790 were both declared in force without submision to the people, and this practice was followed in the adoption of their earlier constitutions by other states, today the universal custom in all states is to submit the work of a Constitutional Convention to the people for ratification or rejection. It is hardly to be supposed that our General Assembly would take a different course.

In view of this universal custom, suppose the act submitting the question of Convention or no Convention to the electorate did not expressly provide that the Convention should have power to adopt a new Constitution and put the same into effect, it is practically certain that in voting for a Constitutional Convention all the electorate would be held to have delegated to the Convention would be the power to formulate a Constitution, not the power to adopt and promulgate it. On the other hand, if the Act submitting the question of a Convention to the electorate expressly said that the Convention should have power to draft and promulgate a new Constitution, then it is apparently equally certain that the electorate voting in favor of the

Convention would thereby expressly confer on such convention the power to adopt and promulgate a new Constitution. There is no reason why the people should not make such a delegation of authority if they wish to do so. The answer to this third question therefore would seem to be that the General Assembly cannot confer the power to promulgate a Constitution on a Convention, but they may propose to the people that they confer such power on a convention and that the power would be conferred if the majority of the electorate voting on the question voted in the affirmative.

The next or fourth question while not relating to the Convention method of changing the Constitution is closely related to the subject of the three questions just discussed.

Question IV.

Can The General Assembly Formulate an Amendment or a New Constitution in the Form of an Amendment and Place the Same Before the People, in Any Other Manner than that Prescribed in Article XVIII?

This question must necessarily be answered in the negative. Were it not for the provisions of Article XVIII the General Assembly could not propose changes in the Constitution to the people for their ratification. The people must first delegate their power to formulate a constitutional change. The present Constitution in Article XVIII provides a definite method by which an amendment can be formulated by two successive legislatures. No such power exists in any one legislature. By adopting Article XVIII the people have expressed their will that their power as a whole to formulate amendments shall be vested not in any one legislature, but in two successive legislatures, the members of the second legislature to be elected after due publication of the amendment proposed by the preceding legislature. For the General assembly of 1921 to provide that the changes in the Constitution recommended by the Commission should be placed at

once before the voters for their adoption or rejection, would be to attempt to exercise a power that the people have not vested in their legislative body.

There has been no direct decision on this point in this State, but the question has been, as we have seen, recently passed on in Indiana where in Ellingham vs. Doyle (178 Ind. 336), the Supreme Court of that state held unconstitutional an act submitting an entirely new constitution to the electorate, on the ground that if it was to amend the existing constitution it did not comply with the provision for amendment contained therein, and if it was for a new Constitution it was in excess of the powers of the legislature.

The remaining question relates to the extent of the constitutional changes which may be made by Amendment under Article XVIII.

Question V.

If the Commission Recommend a New Constitution Will the General Assemblies of 1921 and 1923 Have the Right to Place Such New Constitution Before the Eelectorate in the Fall of 1923 as an Amendment of the Present Constitution?

In this state there is no precedent for such a course. A new Constitution or a series of amendments practically amounting to a complete revision of the Constitution have never been submitted to the electorate under the amending provision of the present Constitution or the similar provision in the Constitution of 1838.

There are, however, two precedents for such action in other states. In Michigan in 1874 and in Rhode Island in 1898 the legislature submitted to the electorate in accordance with the provisions of their existing Constitutions a complete new Constitution. (Act of March 26, 1874, Laws of Michigan 1874. Laws of Rhode Island 1898, page 133). In neither case was the action of the legislature attacked in the courts but in both cases the instruments were rejected by the people, in the case of Michigan by a vote of 39,285 for and 124,034 against (Thorpe, American Constitutions, Vol. 4, page 1976). It seems that this result was due in part to a feeling among the people

that the legislature of that state had assumed too much in making a general revision. (Jameson, Constitutional Conventions, page 575). In a recent case the Supreme Court in Michigan in speaking of the power of the legislature to propose changes in the Constitution said: "Single Amendments might be submitted to a vote of the people by the legislature, but no power to provide for a general revision was ever conferred upon the legislature." The Michigan Constitution, it is true, does provide for constitutional revision by a convention. Rhode Island, however, as we have seen, is the only state that is limited to the method provided in its existing Constitution.

The point at issue is the meaning of the word amendment in Article XVIII. The argument in favor of the position that there is no limitation on the character, variety, or extent of the changes that can be embodied in one Amendment is based on the ordinary use of the amendment in legislative procedure. Unless some special rule or procedure not generally recognized in deliberative assemblies stands in the way, there is no reason why a motion cannot be adopted to strike out all after the enacting clause and insert an entirely new text. Following this analogy, in spite of the absence of precedence, the Constitution can be amended by repealing all after the preamble and inserting a new Constitution. If this reasoning is regarded as conclusive there is, of course, no objection to submitting to the electorate at one time under the provisions of Article XVIII as one Amendment an entirely new Constitution or a series of Amendments which, as a whole, practically amount to a new Constitution.

The argument against the right of the General Assembly to deal with a new constitution as an Amendment which may be adopted under the provision of Article XVIII, is that an examination of the Constitutional history of the state shows that the object of Article XVIII was to meet the desire for amendment as distinguished from complete revision of the existing Constitution. Article XVIII first

appears in the Constitution of 1838. Prior to that time the only legal method of changing the Constitution was a Constitutional Convention. The adoption of the amending article was not intended and has not deprived the people of their right to deliberate over the formation of a new Constitution in the only manner in which all the people can be said to have the power to deliberate, namely, through a meeting of delegates specially constituted for that purpose. Constitutional change involves two processes. One of these is deliberation and discussion, ending in the embodiment of the changes proposed in exact language; the other the final act of adoption. The Convention method is the recognized method in this and all other states by which from Colonial times the people as a whole have participated in the first step. For minor changes a Convention is not needed. Therefore the people adopted Article XVIII. Nothing is said in the Article about a new Constitution, or complete or even partial revisions, and it is not to be presumed that they intended to waive their right to take part through the machinery of a convention of specially elected delegates in the deliberation, discussion and formulation of a new Constitution or of any extended revision of the Constitution.

Whatever may be our individual judgment as to the relative weight of these arguments, in the absence of any Constitutional right to obtain an opinion from the Supreme Court, there would be unquestionably an element of risk in attempting to submit to the people under the machinery provided by Article XVIII, a new Constitution as a single Amendment. It is possible that the Supreme Court might declare the new instrument adopted in this manner, not the Constitution of the State. The risk, of course, would be materially decreased if the changes, no matter how sweeping, proposed by the Committee were embodied in the form of a series of separate amendments.

PART IV.

The Possible Forms in which the Constitution Recommended by the Commission May be Embodied.

The Commission may embody its proposed Constitutional changes in the form of amendments to the present Constitution, or in the form of a new Constitution.

If the changes are embodied in a series of amendments:

(a) One amendment may be submitted for each section to be changed or omitted, and also one amendment for each new article and each new section to be added to an existing article, or

(b) Each article to which a change in more than one section is made may be submitted as one amendment.

If plan (a) was adopted to carry into effect the changes embodied in the Preliminary Draft it would necessitate over sixty separate amendments. This number could be considerably reduced by combining plans (a) and (b) and submitting all the changes in any one article as one amendment where the Article has been extensively revised. The largest number of separate amendments yet submitted at one time to the electorate of a state were the 41 amendments to the Constitution of Ohio submitted to the electorate of that state in 1910.

Again, if a series of amendments are submitted each amendment must be so far complete in itself that no matter what amendments are adopted or rejected the constitution as amended will be free from confusion. Thus in the present Constitution, two or more sections may deal in whole or in part with the same subject matter. Where this occurs a change in one section may necessitate a change in another section. If each section as amended is submitted separately, and one section is adopted and the other defeated, serious confusion might result. For instance, in the Preliminary Draft, Sections 8 and 21 of Article IV are both so amended as to make the office of Secretary of Internal Affairs an appointive instead of as at present an

elective office. If the amendment to Section 8 was adopted and that to Section 21 defeated, the Constitution would declare in one section that the secretary of Internal Affairs should be appointed by the Governor and in the other that he should be chosen by the people.

If the Commission decide that it is advisable to embody their proposed changes in the form of a series of Amendments, it will require no little ingenuity to overcome such difficulties. No one, however, can say in advance of a knowledge of the changes finally adopted by the Commission, and a patient attempt to embody the changes in a series of amendments, that the task will prove impossible.

PART V.

The Time Which Must Elapse Before a New Constitution or Amendments to the Present Constitution Can be Adopted.

The Commission will make its report to the General Assembly which will meet in January 1921. If the changes recommended are embodied in the form of amendments, and the General Assembly decides to proceed in respect to the recommendations under the provisions of Article XVIII of the present Constitution, the earliest date in which they could become incorporated into the Constitution would be at least three months after the amendments had been adopted by the General Assembly of 1923. This means for all practical purposes that the amendments would not be adopted until the Municipal election in November 1923. The General Assembly of 1923 might postpone their submission to the electorate until the general election in November 1924.

If the General Assembly of 1921 decides to adopt the convention method, they may at once appoint a date for an election to decide the question whether the people desire a convention to be called and at the same time elect delegates to the convention if the vote is favorable. If it was desired to avoid the expense of a special election, the question could be submitted and the election of delegates had at the regular municipal election in November 1921. If it was

desired to first place the question of calling a convention before the people, this could be done at a special election in the spring of 1921 provided the General Assembly would act with promptness in passing the necessary law. Again it might be practical to put the question of calling the convention before the electorate at the time of the fall primaries in 1921 and provide for the election of delegates in November if the people voted in favor of the convention. If this was done the nomination for delegates would have to take place in the 1921 fall primaries, in other words at the same election at which the question of convention or no convention was voted on, unless the General Assembly provided a method for nominating the delegates other than at a primary.

From the foregoing it is clear that if any early Constitutional Convention is really desired by the General Assembly of 1921, it is possible to have such a Convention meet in January 1922. This means that the result of the labors of the Convention, whether in the power of a new Constitution or a series of amendments, can be placed before the people at the general election in November 1922. If the action of the Convention is approved by the people a new Constitution or a series of amendments might go into effect with the inauguration of our next Governor.

Very truly yours,

WM. DRAPER LEWIS.

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 30

MANDAMUS EVIL IN PHILADELPHIA.

Harrisburg, April 6, 1920.

Hon. Charles H. English,

Chairman of Special Committee on Municipalities.

Dear Sir: You have asked me to submit a memorandum on what is known as the mandamus evils in Philadelphia and the constitutional changes, if any, which may tend to modify the same.

There are three classes of mandamuses in Philadelphia which constitute most of the evil of the mandamus system. These are:

I. Mandamuses to pay judgments obtained in accident cases.

II. Mandamuses to pay land damages consequent upon the condemnation of land by councils or by the commissioners of Fairmount Park.

III. Mandamuses to pay the salaries of employes whose position or salaries a court or other body is permitted by statute to fix.

What actually happens is, in cases I and II, that a judgment having been obtained against the city, the court upon petition issues a mandamus execution directing the treasurer to pay the amount of the judgment with interest out of the first undesignated fund coming into his hands. In the third case, I think that a judgment is entered against the city in favor of the employe whose salary is to be paid, and that a similar mandamus execution is then issued.

The evils of the system are two:

I. It prevents a real budget system.

II. It entails waste of money.

Possible corrections of these evils may be obtained by:

I. As to the extent cases require councils to estimate how much will be required during the year to meet such judgments, putting this amount in the budget and making an appropriation for it.

II. In the land damage cases a statute or constitutional provision requiring an official board to estimate what the damages will be before a condemnation ordinance can be passed and requiring appropriations in the amounts of these estimates to accompany all condemnation ordinances, so that the estimated cost of the condemnations cannot exceed actual appropriations to pay the necessary land damages.

III. The courts and other bodies who may now create positions and fix salaries should be prevented from doing this by a statute or constitutional provision requiring all positions and salaries to come from councils or from the general assembly. The Charter Revision Committee prepared a careful act which specifically forbade the courts to issue any mandamuses to pay for salaries, supplies, rent or purchase price of real estate unless councils had made an appropriation specifically authorizing payment. The act also forbade the courts to compel councils to make an appropriation for such purposes or to compel councils to authorize the appointment of any employe.

If it is desired to insert in the Constitution the principle set forth under III, a section worded somewhat as follows might serve:

ARTICLE MUNICIPALITIES, SECTION 16-A.

In Philadelphia county officers and municipal court judges shall annually submit to the chief executive of the city of Philadelphia estimates of the needs of their respective offices and courts. The councils of the city or other body vested by law with the power of appropriation shall have the same control

over appropriations for the support of such county offices and municipal courts as over appropriations for the support of a municipal office, except that the general assembly may by law designate the salaries of county officers and the salaries of judges of municipal courts.

Very truly yours,

WM. DRAPER LEWIS.

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 31

CIVIL SERVICE REFORM.

Harrisburg, Pa., April 7, 1920.

Mr. George Wharton Pepper,

Commissioner.

Dear Sir: I understand you desire a memorandum on the constitutional provisions desired by any association devoted to the improvement of the civil service of the state.

The principal association of this character is the Pennsylvania Civil Service Reform Association; President, Mr. George Burnham, Jr.

I have ascertained that this association favors the following constitutional provision.

"Appointments and promotions in the Civil Service of the state and of all the civil divisions thereof including counties and cities, shall be made according to merit and fitness to be ascertained so far as practicable, by examination, which so far as practicable, shall be competitive."

The source of the suggestion is the New York amendment to state constitution adopted 1894, which reads:

Article V. Section 9. * * * "Appointments and promotions in the Civil Service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examination, which so far as practicable, shall be competitive.

The same principle with the use of the words "merit and fitness" is found in the Ohio constitution of 1912.

The reasons given by the association for the endorsement of the principle of the merit system may be stated under four heads:

(a) Experience shows that it is the most effective means of securing competent employes for the public service. The following states now have state civil service laws:

California	Massachusetts
Colorado	New Jersey
Connecticut	New York
Illinois	Ohio
Kansas	Wisconsin

(b) Spoils of office do *not* belong to the political party or faction in power to enable it to build up an organization to keep itself in power. Every citizen of the state in a democracy has an equal right to fair chance to be appointed on his merits to positions in the public service. On this point, Mr. Roosevelt said:

> "The merit system of making appointments is in its essence as democratic and American as the common school system itself. It simply means that in clerical and other positions where the duties are entirely non-political, the applicants should have a fair field and no favor."

And Mr. Taft said:

> "If we selected employes according to the length of their noses it would be better than the political spoils system of appointment."

(c) The dominant political parties have each endorsed the merit system.

> "The Civil Service law has always been sustained by the Republican party, and we renew our repeated declaration that it shall be thoroughly and honestly enforced and extended wherever practicable."—REPUBLICAN NATIONAL PLATFORM, 1916.

"We reaffirm our declarations for the rigid enforcement of the civil service laws."—DEMOCRATIC NATIONAL PLATFORM, 1916.

And on this subject Elihu Root said:

"The spoils system is not essential to effective party organization. On the contrary, it tends to prevent effective party organization. It tends to keep out of the organization the men whose services would be most effective."

(d) The civil service system is popular and always is endorsed by the voters when they get an opportunity to vote.

Below is the record of votes for and against the merit system in the various states where the question has been submitted to the electorate:

	For	Against	Majority For
Illinois:	411,676	121,132	290,544
(State Civil Service Law.)			
Colorado:	75,301	41,287	34,014
(Amendment to State Constitution.)			
Ohio:	306,767	204,580	102,187
(Constitutional Provision.)			
New Jersey:	162,013	93,261	68,752
(Local adoption of State Law by six counties and seven cities and Newark School District.)			
Total:	955,757	460,260	495,497

Two out of every three voters favor the merit system.

The reasons given by the Association for inserting a provision in the State Constitution may be stated as follows:

(a) Because the principle is fundamental and essential in a democracy. Mr. Charles W. Eliot, President Emeritus of Harvard University has said:

"Civil service reform is so fundamental that all other reforms must rest on it."

(b) The provision serves as a safeguard to protect the people against the power of those who desire to use the loaves and fishes of public office for their own political perferment.

(c) Somebody has said that the future of America depends upon her success in committing the administration in all its branches to the hands of experts, subject to democratic control. The merit system serves as a means of assisting in this process by making civil service an efficient system of public employment management.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 32

SCHOOLS—SUPPORT OF .

Harrisburg, Pa., April 7, 1920.

Doctor Edgar F. Smith,

Chairman Committee No. 5.

Dear Sir: I understand you desire me to submit a brief on State support of public schools and constitutional provisions relating thereto.

I sumbitted a series of question to Doctor Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answered by Doctor Updegraff were as follows:

I. What provisions have states other than Pennsylvania placed in their constitutions relative to the support of public schools?

II. How does Pennsylvania compare with other states in the amounts contributed by the State Government to public schools?

III. What factors may determine the proportion of total public school support that should be borne by the State and by the school districts?

IV. How have the costs of schools in Pennsylvania compared with the costs of schools in other states?

V. How do schools of Pennsylvania compare in efficiency with other states?

VI. By what amounts should the costs of schools in Pennsylvania be increased in order to have her schools as efficient as those in other states?

VII. What is the language of the sections of the constitutions of other states dealing with support of public schools?

I submit herewith Doctor Updegraff's replies to these questions.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

REPLIES SUBMITTED BY HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA.

QUESTION I.

What provisions have states other than Pennsylvania placed in their constitutions relative to the support of public schools?

Forty-one of the forty-eight states provide in their constitutions for some measure of support for public schools. Those that do not are for the most part situated along the Atlantic coast. They are Illinois, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island and Vermont. Thirty-four of these forty-one states establish a permanent school fund setting forth the sources from which it shall be derived and prohibiting its use for any purpose other than the public schools. Twenty-four of the forty-one states provide for the levying of a state school tax of a varying number of mills ranging all the way from 1 mill in the State of Florida to 6 mills in New Mexico.

Six states authorize a state tax on corporations. These states are as follows: Arizona, Idaho, Indiana, Missouri, Nevada and Utah. Nine states, situated mostly in the South, provide for the levying of a state poll or capitation tax for the public schools. But four states provide for state appropriations outright, although a number of state constitutions require that the state shall appropriate each year for

the public schools an amount equivalent to the interest upon the permanent school funds which in years gone by were spent by the State for other purposes.

Among other miscellaneous sources for the support of public schools mentioned in the constitutions of the various states are the following: fines for offenses against state laws in eight states, liquor taxes in two, taxes on circuses, on domestic animals and bank tax, one each.

The actual value of these common school funds and of property, such as public lands, the income from which is distributed among the public schools, vary widely among the various states. In nine states there are no actual permanent school funds. In nineteen the amounts of the funds range from a few thousand, such as Pennsylvania, to five million; in seven state from $5,000,000 to $10,000,000. Ten states have funds varying in value from $10,000,000 to $50,000,000. In one state the amount is approximately $75,000,000, in another $90,000,000, and in one over $300,000,000.

Extracts from the constitutions of various states may be found on page —

QUESTION II.

How does Pennsylvania compare with other states in the amounts contributed by the State Government to public schools?

The contributions which states make to the support of public schools are derived for the most part from the income of the permanent school funds and from appropriations. The amounts thus distributed, expressed in terms of the amounts per capita of the states' population, show a wide variation. In Pennsylvania it is 97 cents. In eleven states the amount per capita is less than $1.00. In twenty-one states the amounts are between $1.00 and $2.00; in eight, between $2.00 and $3.00; and in two states between $4.00 and $5.00 per capita. The ten states paying out less amounts to local schools than Pennsylvania are three New England states—New Hampshire, Massachusetts, and Rhode Island—five southern states, and New

York and Illinois. The amount for Ohio is $1.04. The eight states which pay over $3.00 are New Jersey ($3.64), Michigan, Minnesota, Arizona, Utah, California, Maine and Nevada.

QUESTION III.

What factors determine the proportion of total public school support that should be borne by the state and by the school districts?

One method of studying this question is to ascertain the practices of other states. The following table gives the states which, in 1916, raised a greater per cent. of the income for public schools through state sources than did Pennsylvania.

STATES WHICH IN 1916 RAISED GREATER PER CENTS OF TOTAL INCOME FOR PUBLIC SCHOOLS THROUGH STATE SOURCES THAN DID PENNSYLVANIA.

1. Montana,	63
2. Alabama,	53
3. Mississippi,	52
4. Texas,	51
5. Kentucky,	46
6. Delaware,	46
7. Maine,	44
8. New Jersey,	44
9. Georgia,	44
10. Maryland,	39
11. Wyoming,	38
12. Arkansas,	34
13. Nevada,	33
14. Virginia,	30
15. Michigan,	28
16. Colorado,	24
17. California,	24
18. Louisiana,	24
19. Utah,	23
20. Vermont,	21
21. Arizona,	20
22. Wisconsin,	20
23. Washington,	19

24. South Dakota,	19
25. Minnesota,	18
26. Tennessee,	17
27. Indiana,	16
28. Oklahoma,	15
29. North Carolina,	15
30. Idaho,	14
31. Missouri,	14
32. New Mexico,	14
33. North Dakota,	13
34. Connecticut,	13
35. Illinois,	12
36. Nebraska,	12
37. West Virginia,	11
38. Florida,	11
39. Pennsylvania,	10.32
40. Ohio,	9.66
41. New York,	8.18

It will be noticed from the above table that there are nine states in which the proportions are smaller than 10 per cent. which is the proportion for Pennsylvania. Four states have over 50 per cent. of the total support of public schools coming from the state treasury, nine have over 40 per cent., fourteen have more than 30 per cent., and twenty-two more than 20 per cent.

A second method of determining the amounts that any state should contribute to education is, first, to consider the principles that underlie state support of schools, second, to analyze data respecting the educational conditions in the State, and third, to apply these principles to the situation as found.

The principles which should underlie the state support of schools may be stated as follows: (See Schoolmen's Week Proceedings, 1919 pp. 135-137)*

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919.

1. "School support should be partly central and partly local. The proportion that each agency should bear is dependent upon the economic and social conditions in the various districts in the State.

2. "That method of support of public schools is best which makes possible the best realization of proper aims of education in every school in the State and for every child of the State. It is not commonly known, or if known, it is not commonly appreciated, that our schools are state schools and not local schools, and that our state education officers have the obligation resting upon them of maintaining a system of public schools throughout the State that is adequate and efficient. . . . The system of school support must then complement local support in such a way as to secure the working out in each local school of those aims, standards and procedures which the States approves.

3. "Regulations of central agencies (the legislature, state boards, etc.) regarding expenditure of central funds should be limited to the statements of the purposes for which the money is to be spent and of the standards which should be maintained in the conduct of the schools. As large a degree of initiative and of freedom of action should be left to the local boards and officers at the certainty of securing these purposes and standards makes possible. . . . .

*4. "In the appropriation of funds to local districts, the plan followed by any state should satisfy as many certain desirable objectives as possible. These, for the purpose of this paper, will be termed 'criteria' and may be stated as follows:

(a) State funds should not be given local districts until the state authorities in charge of the fund have assured themselves that the minimum standards imposed by the state upon

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919, pp. 135-137.

local districts have been maintained during the period to which state aid applies. . . .

(b) The State should encourage new phases of school work by granting partial support. We have examples of this in our State in the granting of state aid to support vocational schools and in the proposed law to assist in the transportation of children to school in rural ditsricts.

(c) The conditions under which the state funds are given should be such as constantly to stimulate local communities to provide the most complete and the most efficient school systems that their economic conditions permit. The criterion is not given attention in Pennsylvania at the present time.

(d) The State should seek through the distribution of its funds to equalize the educational opportunities among the various districts to the greatest possible degree in order that each child in the state, irrespective of his residence, may have equal advantages with every other child. While this criterion is written into the act creating the State Board of Education, in that it is made one of the duties of this board to seek to realize it, nevertheless, Pennsylvania has not up to the present time, expended any appreciable amounts of its funds for this purpose. . . . .

(e) The State, through the distribution of its funds, should equalize the educational burdens of the various districts to the greatest possible degree. While the validity of this criterion has been reorganized in Pennsylvania, our system of distribution of state school funds satisfies it but to a slight degree. The fact that the teachers' quota is the same for all districts in the State, whether salaries are low or high, may at first glance seem to be an application of this criterion. This obtains only to the extent that salaries of teachers are in direct proportion to the financial abilities of

the districts to support schools. This is far from the truth; some districts paying high salaries are much poorer than others paying the same salaries. In rural districts, some of which are very rich and others very poor, low salaries generally prevail."

Sufficient funds must be provided through state sources to realize all of these desirable objectives just stated. The amounts that will be necessary will be dependent upon the social and economic conditions existing therein. For example, if there is little interest in public education in a large number of localities, larger amounts must be set aside to realize the second and third objectives than in those States in which the interest in education is fairly uniform throughout all of the localities. Again in the same way large differences in wealth of local districts will make necessary large appropriations to realize the fourth and fifth objectives; while in those States in which wealth is fairly evenly distributed less amounts of State money will be required.

The question then arises as to whether the interest in schools is more or less uniform throughout Pennsylvania than in most states, and also whether the wealth is evenly or unevenly distributed among the various local districts.

It is rather difficult to answer both of these questions with strong assurance. Reliable data are not at hand and we are compelled, in forming a judgment to rely upon the observation of those who have a wide acquaintance with schools in various states. It is self-evident to observers that there are, for example, certain mining districts or certain manufacturing towns and also certain backward rural communities in which interest in education is very low. On the other hand, there is a deep interest in education in certain suburban towns in certain progressive cities and in a few rural communities. On the whole, however, it seems that there are an unusually large number of districts in Pennsylvania having poor schools. Below are quoted certain facts relative to the cost of schools in Pennsylvania and also to

the character of service rendered, which confirm this judgment. In fact it is not far from the truth as these facts will show, to classify Pennsylvania, in these respects, as among the less progressive educational states in the Union. Certainly she lags behind most of the states east of the Mississippi and north of the Mason and Dixon line.

When we turn to a comparison of the wealth of the school districts, we have data that are more reliable. A table is given here showing the true value of the assessed wealth behind each teacher employed in 931 districts in 21 counties in Pennsylvania, the data being for the year 1918. This table is to be read as follows: In sixty-four districts the wealth behind each teacher is less than $20,000; in seventy districts between $20,000 and $40,000, etc.

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919, pp. 140.

TABLE—VARIATION IN TRUE VALUATION OF ASSESSED WEALTH BEHIND EACH TEACHER IN 931 DISTRICTS IN 21 COUNTIES IN PENNSYLVANIA.

True Valuation in Thousands	Total
Less than 20	64
20-39	70
40	121
60	142
80	87
100	79
20	68
40	59
60	52
80	34
200	23
20	20
40	19
60	17

80,	12
300,	9
20,	5
40,	8
60,	6
80,	2
400,	2
20,	3
40,	4
60,	1
80,	3
500,	2
20,	1
40,	0
60,	2
80,	0
600,	1
20,	0
40,	2
60,	0
80,	1
700,	2
20,	0
40,	1
60,	2
80,	0
800,	0
20,	0
40,	0
60,	0
80,	2
900,	0
20,	0
40,	0
60,	0
80,	0

1000,	0
20,	0
40,	1
60,	0
80,	1
1100,	0
20,	0
40,	1
60,	0
80,	1
1200,	1
Total,	933

Regarding this table the author makes the following comments:

1. There is a wide variation among the districts in the amounts of wealth behind each teacher. The district highest in wealth has taxable resources 60 times as much as the lowest.

2. These wide variations exist in all classes of districts.

3. Taken as groups, the first-class districts have the greatest wealth in proportion to the number of teachers; the second-class, next; the third-class, next; while the fourth-class districts have the least.

4. The variation in the wealth of districts is wider in the fourth than in the third, wider in the third than in the second, while the two first-class districts are almost equal in this respect—$343,938 for Pittsburgh and $322,919 for Philadelphia.

5. Certain fourth-class districts have the greatest amounts of wealth per teacher—even greater than the wealthiest of the first and second-class districts.

6. Certain third-class districts have still greater wealth than the wealthiest of the first and second-class districts.

7. From all this, it follows that one cannot infer the wealth of a district from the class to which it belongs. Nor can it be said that rural districts have uniformly less wealth than city districts.

"These facts and the conclusions drawn from them should have much weight in the shaping of a financial school policy for the State of Pennsylvania. But they are not all. Many of the wealthy districts have a relatively small number of children, while, on the other hand, many of the poor districts have a large number of children. Districts of these two types frequently lie alongside of each other. They are like two men walking along the road, each carrying a basket—the one, a pigmy, with a basket so large that it almost hides him; the other, a giant, with a basket so small that it is not, at first, observed. Many districts are totally unable to give their children adequate schooling and deserve much assistance from the State, other districts are in themselves wealthier than the State taken as a whole and are fully able to support schools without little or no assistance from the central government. Betweeen these two extremes of the pigmy and the giant are many districts—some more like the former, others more like the latter. The amounts of money that should be received by each from the State should be apportioned in such a way as to satisfy the last two of the five criteria stated above." (Schoolmen's Week Proceedings, p. 143-144.)

Comparable data with other states is not available in any large amount. We know however, that the differences between the wealth behind each child in the various towns of Massachusetts is not nearly so great as in Pennsylvania, probably about one-tenth as much. In other words, while the wealthiest district in Massachusetts is only six times as wealthy as the poorest, in Pennsylvania the wealthiest district is sixty times as wealthy as the poorest. Ordinarily we would think that Massachusetts is a typical state as far as the distribution of wealth is concerned. If this be true, it would seem to follow that Pennsylvania is unusually conspicuous for its extremes of wealth in local communities. It is altogether probable that in no other state in the Union are the differences so large.

The conclusion growing out of the application of these principles in the light of the facts as found is, that Pennsylvania should have unusually large amounts for public education furnished and distributed by the state government in order to encourage the many backward districts to make new undertakings, to stimulate all districts to do their best, to provide educational opportunities in poor districts equal to those of the rich districts and in so far as may be found practicable, to equalize the educational burdens. It would seem, therefore, that instead of Pennsylvania ranking thirty-eighth in the amount per capita expended by the State for schools and thirty-ninth in the proportion of total school support furnished by the state, the state appropriation should be increased to the point where she would rank at least among the highest quarter or in other words among the first twelve states. This means that from one third to one half of the total support of schools in Pennsylvania should be derived from State sources instead of the present 10 per cent.

QUESTION IV.

How have the costs of schools in Pennsylvania compared with the costs of schools in other states?

The comparisons are made in the following tables with costs of schools (a) in the Northern Atlantic States composed of all nine states north and east of and including Pennsylvania and New Jersey, (b) in the North Central States composed of all those states—12 in number—west of Pennsylvania and north of the Ohio River including on the west, Kansas, Nebraska and the Dakotas, (c) in the Western Division, 11 in number—composed of 11 states in the extreme western part of the country, (d) in New York and (e) in New Jersey. Unit costs are furnished on different bases. Data are all for the year 1915-1916 and are from the Report of the Commissioner of Education for 1917, the latest data available.

EXPENSES OF PUBLIC SCHOOLS PER CAPITA IN 1915-1916.

States.	In All Schools.		In City Schools.
	Per Capita of Population.	Per Capita of Daily Attendance.	Per Capita of Daily Attendance.
North Atlantic States,	6.10	44.71	46.74
North Central Division,	6.36	40.08	44.63
Western Division,	7.71	54.25	59.52
New York,	6.33	49.32	53.31
New Jersey,	7.14	49.88	49.23
Pennsylvania,	5.73	40.26	38.79

Each of the three comparisons of cost point to the same conclusion. The costs for education in Pennsylvania are very low when compared with the costs of education in the more progressive states. While it is true that the costs of education have increased in Pennsylvania during recent years, it is a fact that as regards the salaries of teachers at least, the increases have not been so large as the increases in the United States as a whole, and that the differences between the increases in Pennsylvania and in other states have become constantly larger with the succeeding years. The following table gives the facts to support this statement:

TABLE 4. AVERAGE SALARIES OF TEACHERS IN UNITED STATES AND IN PENNSYLVANIA AS GIVEN IN REPORTS OF U. S. COMMISSIONER OF EDUCATION FOR YEARS INDICATED.

Year.	MEN.				WOMEN.			
	U. S.	PA.	Difference.		U. S.	PA.	Difference.	
			Dol.	Per Cent.			Dol.	Per Cent.
1888,	41.75	38.54	3.28	8.3	34.21	30.16	4.05	13.4
1893,	46.39	43.94	2.45	5.6	38.46	33.04	5.42	16.4
1903,	49.98	44.82	5.16	11.5	40.51	34.11	6.40	18.8
1913,	78.29	65.82	12.49	18.9	61.31	48.69	12.62	28.0
1915,	82.35	68.43	14.92	21.8	64.72	50.14	14.58	29.1
1916,	85.36	68.63	17.73	25.8	66.88	50.55	16.33	32.3

The low standards of teachers salaries in Pennsylvania may be made still more evident by Table 5 which shows that in 1916, the average annual ratings of all teachers in New York was 106 per cent and in New Jersey 85 per cent higher than in Pennsylvania. The differences in amounts per pupil are not so great because the schools of Pennsylvania are more crowded than those of the other states. In fact there was no other state in the Nation in which teachers received so small a proportion of the total expense. On the other hand, expenditures for operation and maintainance of the school plant consumed unusually large proportions of the total expense. The same is true of expenditures for new buildings, although to a less degree. It would seem as though school boards have been more interested in the material elements of the schools than the spiritual, and have taken better care of the janitor, the contractor and the school supply men than of the teachers.

TABLE 5. AVERAGE ANNUAL SALARIES OF ALL TEACHERS AND EXPENSES OF SALARIES PER CAPITA OF AVERAGE DAILY ATTENDANCE 1915-16.

	Average Annual Salary.	Salaries Per Capita of Average Attendance.
North Atlantic States,	728.56	29.41
North Central States,	569.65	26.25
Western Division,	797.47	37.95
New York,	967.20	36.35
New Jersey,	872.34	31.08
Pennsylvania,	470.18	22.51

These data show that in order to have schools in Pennsylvania maintained on the same plane of efficiency as other States, a radical change must be made in the policy of the State regarding school support, for the quality of service rendered in teaching, as in other vocations, is influenced to a considerable degree by salaries received. The interests of education are of sufficient importance to the State to warrant the protection of the schools by such a provision in the con-

stitution as would guarantee adequate support for teachers salaries especially upon the part of successive legislatures so that the needs of the schools will not be weighed against the demands of other less vital interests of the State. This protection is afforded in the conduct of local schools in Pennsylvania by reason of the fact that local school boards are independent of municipal governments. In certain other states where city councils vote money to the school boards, the schools almost invariably suffer when put in competition with other interests. Such a condition should not be permitted longer to exist in the legislature of the State of Pennsylvania.

QUESTION V.

How do schools of Pennsylvania compare in efficiency with other states?

It is very difficult to answer this question with any degree of conclusiveness. There are, however, certain reliable objective data available which shed some light upon the question. The tables given below contain comparisons of the same States as those furnished in the section above:

TABLE 6. DATA RELATIVE TO ENROLLMENT, ATTENDANCE OF PUPILS IN VARIOUS GRADES OF SCHOOLS, AND NUMBER OF PUPILS PER TEACHER.

	Per cent. of school population enrolled.	Per Cent. Enrolled in Each Grade.			No. of days attended by each pupil enrolled.	No. of pupils per teacher.
		Elementary.	Secondary.	Higher.		
North Atlantic States,	71.95	88.6	9.2	2.2	143.6	27.7
North Central States,	77.41	88.6	8.9	2.5	134.4	22.1
[illegible]	81.98	86.1	11.4	2.5	127.8	21.4
New York,	69.59	88.2	9.4	2.4	154.3	24.6
New Jersey,	76.39	90.	9.2	1.	142.9	25.2
Pennsylvania,	70.86	90.3	7.3	1.9	139.1	28.1

These tables seem to indicate that Pennsylvania cannot be classed among the more progressive states of the Union in that she is not so successful in getting her children into the school, in that the average number of days in the school term is not so many, and that the children do not have as many days of schooling per year. It is also clear that when the children are in school, those of Pennsylvania do not receive the same amount of attention from the teacher as in other states, by reason of the fact that the number of pupils per teacher is so many more, nor do so many of them advance into the high schools. Less proportion of children in the schools, less attention given to the children by the teacher during the school term, and smaller amounts of education given are objective facts which seem to assign Pennsylvania schools to a low rank among the more progressive school systems of the Union.

It is pertinent to inquire at this point whether the teachers who instruct the children while they are in school are as efficient as those in other states. While our data upon this question is not so complete as upon the points just treated, there is one deficiency in Pennsylvania which is almost appaling and degarding which there can be but little doubt, namely, that the teachers in 40 per cent of the one-room rural schools have not had any high school education whatsoever. It does not seem probable that any other state with which we have been making comparisons has a record so poor as this. While Pennsylvania could make a better showing in comparison with other states upon the basis of teachers in the city schools, yet it must be remembered that many of the best teachers have in recent years been attracted to other states because of the higher salaries offered in those states.

QUESTION VI.

By what amounts should the costs of schools in Pennsylvania be increased in order to have her schools as efficient as those in other states?

Without stating definite figures which should be offered only after a careful study of the entire educational situation in the State both in the past and probable future, there are certain considerations which may be pointed out that have an important bearing upon the problem of future support.

(a) In order to have made it possible in 1916 for Pennsylvania's schools to render as good service as the best states in the Union, it would have been necessary to increase her expenses beyond what they then were by 20 to 25 per cent, all of which should have gone into teachers salaries. In addition, economies should have been introduced in the operation and maintainence of the school plants and used in part for needed equipment and supplies and in part for further increases in salaries.

(b) The increased cost of food, clothing, rent, school supplies and equipment since that time amounting approximately to 100 per cent, would seem to make necessary a doubling of expenses, not as they were, but as they should have been at that time.

(c) It should not be forgotten that there are greater demands upon the schools for increased funds by reason of the recent World War. It is not only necessary to offer greater diversity in the curriculum in both the elementary and secondary schools and at a greater increase of expense per pupil than was necessary for the traditional school subjects, but in addition thereto education must be provided for adults, particularly those who are foreign born and of which there are a large number in the state of Pennsylvania.

(d) It follows that expenses of schools in Pennsylvania should be more than doubled above what they were in 1916, in order to put her schools on the same plane of efficiency as the schools in the more progressive states.

(e) This increased cost of schools should come largely from State sources of taxation. An increase in the proportion of expenses that should be paid by the State from 10 per cent to from 34 to 50 per cent suggested above would for the most part provide the funds here indicated as desired. This State assistance should be made certain by a constitutional provision indicated in an earlier section of this article.

QUESTION VII.

What is the language of the sections of the constitutions of other States dealing with support of public schools?

The Indiana constitution furnishes a typical example of a State in which the permanent school fund is still intact.

Article VIII., Section 1. "Knowledge and learning generally diffused throughout a community, being essential to the perservation of a free government, it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Section 2. The common-school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank-tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estates which shall escheat to the State for want of heirs or kindred entitled to the inheritance:

All lands that have been or may hereafer be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress, of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the general assembly for common-school purposes.

Section 3. The principal of the common-school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever."

A small number of the states did not protect and conserve the grants coming from the National government—Pennsylvania belongs to this group. Some of these states have, however, taken care that the interests of the schools should not suffer by assuming the amounts spent as a debt to the schools of the State. The following provision in the Louisiana constitution furnishes an illustration.

Article 257. "The debt due by the State to the free-school fund is hereby declared to be the sum of $1,130,867.51 in principal, and shall be kept on the books of the auditor and treasurer to the credit of the several townships entitled to the same; the said principal being the proceeds of the sales of lands heretofore granted by the United States for the use and support of free public schools, which amount shall be held by the States as a loan, and shall be and remain a perpetual fund, on which the State shall pay an annual interest of 4 per cent, and that said interest shall be paid to the several townships in the state entitled to the same, in accordance with the act of Congress, No. 68, approved February 15, 1843."

An example of a State school tax provided for by constitutional enactment is found in Arkansas.

Section 3. "The general assembly shall provide by general laws for the support of common schools by taxes, which shall never exceed in any one year 3 mills on the dollar on the taxable property of the State, and by an annual per capita tax of $1.00 to be assessed on every male inhabitant of this State over the age of 21 years: Provided, The general assembly may, by general law, authorize school districts to levy by a vote of the qualified electors of such districts a tax not to exceed 7 mills on the dollar in any one year for school purposes."

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 33

INITIATIVE AND REFERENDUM.

Harrisburg, Pa., April 12, 1920.

Mr. Gifford Pinchot,

Commissioner.

Dear Sir: You have requested me to submit a brief explaining the state-wide initiative and referendum, constitutional provisions relating thereto in other states, and giving detailed results of their operation since January 1, 1914.

EXTENT TO WHICH THE STATE-WIDE INITIATIVE AND REFERENDUM HAS BEEN ADOPTED.

The referendum as applied to constitutional amendments proposed by the legislature or by constitutional convention is an established institution in all of the American states. The referendum as applied to laws and the initiative as applied to laws and constitutional amendments is a comparatively recent development. The referendum as applied to laws made its first appearance in the United States in the constitution of South Dakota in 1898. Since then it has been introduced into Utah (1900), Oregon (1902), Nevada (1905), Montana (1906), Oklahoma (1907), Maine (1908), Missouri (1909), Arkansas and Colorada (1910), Arizona, California and New Mexico (1911), Idaho, Ohio, Nebraska and Washington (1912), Michigan (1913), North Dakota (1914), Maryland (1915), Mississippi (1914), and Massachusetts (1917). The initiative was successively written into

the constitutions of Utah (1900), Oregon (1902), Montana (1906), Oklahoma (1907), Maine, Missouri and Michigan (1908), Arkansas and Colorado (1910), Arizona and California (1911), Ohio, Idaho, Nevada, Nebraska and Washington (1912), North Dakota (1914), Mississippi (1914) and Massachusetts (1917).

The constitutional provisions of Utah and Idaho are not self-executing; and the legislatures of these states have never enacted enabling legislation.

The initiative, as usually defined in state constitutions where it exists, is the power reserved to the people "to propose and adopt laws independently of the legislature." In some states both statutes and constitutional amendments may be initiated; in others, only statutes.

Two forms of the initiative as applied to the adoption of statutes are in use. Under one system, the initiated measure is proposed directly to the voters by the initiators. This is known as the direct initiative. The other plan requires measures to be first submitted to the legislature. If the legislature adopts the proposal and enacts it as presented, there is no submission to the voters unless the law is placed on the ballot by referendum petition. If, however, the legislature does not pass the law as presented, it goes before the electorate for approval or rejection. This is called the indirect initiative.

In the constitutions of some states, as for example, Michigan, Nebraska and New Mexico, the same limitations apply to the power of the people to initiate and adopt laws as apply to the power of the legislature. In Montana apropriation measures and local and special legislation are specifically excepted from the general power conferred upon the people to initiate measures.

The referendum is defined as the "power reserved to the people to approve or reject at the polls any act of the legislature." In some states it may be applied to "an act, item, section or part of an act."

Practically all of the states in which the referendum is in force, limit the power thus reserved to the electorate. A very common exception prevents its application to "laws necessary for immediate preservation of the public peace, health or safety." Another exception, almost as general, includes "laws for the support of the State government." Another, "laws for the support of state institutions." Less general limitations prevent the reference to the people by petition, of appropriation laws generally, tax laws, laws for the payment of the public debt, interest thereon, or for the creation or funding of public debt, laws passed by a two-thirds vote of the legislature, and "such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch or of any committee or officer thereof, or which appropriate money therefor or for the payment of salaries fixed by law, or emergency measures."

The initiative and referendum, when found in state constitutions, are included in the section of the state constitution which creates the legislature. "The legislative authority shall be vested in the legislature, consisting of a senate and house of representatives but the people reserve to themselves the power to propose laws and to enact or reject the same at the polls, and also reserve power, at their own option, to approve or reject at the polls any act passed by the legislature."

It will be observed: First, that the constitutions of states using the initiative and referendum do not confer less power on the legislature than is given it in other states. The legislative power is fully conferred upon the legislature. Second, the initiating and referring powers are reservations, not assumptions, of authority. The expression, "the people reserve to themselves," merely emphasizes the fact that theoretically the constitution of every state is the pronouncement of the people, and the initiative and referendum go no further than to make possible the exercise of a power inherent in the body of the electorate.

In a number of the states not only may Acts of Assembly be submitted to the voters by petition, but the legislature itself may provide that as a condition precedent to the taking effect of an Act, it shall first have been approved by the electorate. In some states this prerogative has been very freely exercised by the legislature as will be seen by the appendix herewith submitted.

Illinois has a modification of the initiative and referendum in the form of what is known as a "Public Opinion" provision. Measures may be placed on the ballot by petition to obtain an advisory vote of instructions to the Legislature, which is however not binding upon the law-makers. As indicated, the vote is merely advisory.

PROCEDURE.

(a) FOR THE OPERATION OF THE "DIRECT INITIATIVE."

The direct initiative is universally brought into operation by petition. In some states, the petition is addressed to the secretary of state; in others to the Governor.

The petition must contain the text of the proposed law or constitutional amendment, and must be signed by a specified percentage of the voters of the state. The required percentage is usually at least 8 or 10. In Missouri, eight per cent. of the voters in at least two-thirds of the Congressional Districts of the State must sign. In Montana, two-fifths of the whole number of counties of the state must each furnish as signers eight per cent. of the legal voters of the state, and at least eight per cent. of the voters of the entire state must sign the petition. In Washington, while the required percentage is ten, it is provided that in no case shall more than 50,000 names be required. In Nebraska, ten per cent. of the voters must sign, but in the ten per cent, must be included five per cent. of the legal voters in each of two-fifths of the counties of the state.

In many states, petitions may be circulated in sections.

Signers, in most states, must giver their residence address, and in some their election precinct and ward. Usually the circulator of

a petition or a section of a petition must make affidavit that the signers are qualified and that the signatures are genuine.

Usually initiative petitions must be filed with the secretary of state, whose duty it is to determine whether a petition bears the requisite number of signatures. The whole number of electors who voted for Governor at the regular election last preceding the filing of any petition is, in most states, the basis upon which the Secretary of State makes his calculation to determine whether the requisite percentage of the electorate has signed the petition.

In some states sections of the petition are filed with the county clerk in the counties in which the respective sections have been circulated; and in California the county clerks must certify to the secretary of state the number of qualified signatures on the sections filed with him.

In a number of states, petitions must be filed at least four months before the measure is to be voted on.

If the petition is found insufficient, in a number of states a supplemental petition may be filed. If the petition is sufficient, or if it has by supplemental petition been made sufficient, the secretary of state submits the measure to the electorate—in most states at the next biennial or regular election unless the legislature shall have ordered a special election for the purpose of voting on initiated measures. The secretary of state is, required to prepare a title for the designation of the proposed measure on the ballot.

Where two or more provisions on the same ballot conflict, the Washington Constitution requires that the conflicting measures be submitted on the ballot in such manner that the voter can express two preferences, namely, (a) as between either measure and neither; and (b) as between one and the other. If a majority of those voting on the first issue is for neither measure, both fail; but if a majority is for either, then the measure receiving the higher vote becomes effective.

A number of constitutions provide that in so far as measures adopted at the same election conflict, either in whole or in part, the measure receiving the highest affirmative vote shall be the law as to all conflicting provisions.

In most states having the direct initiative, a majority of those who vote on any measure determine the question of its adoption. In Washington this is, however, subject to the proviso that the vote cast upon the measure shall have been equal to at least one-third, and in Nebraska thirty-five per cent. of the vote cast at the election. Oklahoma requires that a majority of the votes cast at the election shall be necessary to adoption.

Measures adopted by the electorate become effective in several states, "when approved by the people;" in others, from the date of official declaration of the vote; in others, upon proclamation by the Governor which in Nebraska is required to be within ten days, and in Colorado within thirty days of the completion of the official canvass; in Maine thirty days after the Governor's proclamation, which must be made within ten days after the completion of the canvass; in Michigan ten days after the official declaration of the vote by the secretary of state, except constitutional amendments which become ecective thirty days after the election at which they are adopted; and in California, five days after the official declaration of the vote by the secretary of state.

In all states, measures adopted by the electorate are not subject to the Governor's veto power, and in some states measures so adopted cannot be repealed or amended by the legislature. In Washington the legislature is forbidden to amend or repeal such measures within two years, and in Nevada for three years after their enactment at the polls. In most states, however, the legislature has a free hand to undertake to change laws initiated and adopted, subject of course to the power of the required percentage of the electorate to file referendum petitions submitting to the voters the question whether the repealing or amending statute shall stand.

(b) FOR THE OPERATOR OF THE "INDIRECT INITIATIVE."

Direct initiative petitions are addressed to the Governor or secretary of state; indirect initiative petitions to the legislature.

The number of signers of indirect initiative petitions is, generally speaking, less than is required upon direct initiative petitions. It varies from three per cent. to ten per cent. of the voters. Ohio requires three per cent., with the proviso that petitions be filed from each of one-half of the counties of the state, bearing the signatures of not less than one-half of the designated percentage of electors of such counties. North Dakota requires ten per cent. of the state's legal voters, including ten per cent. of the voters in a majority of the counitse of the state. Maine requires petitions to be signed by at least twelve thousand voters.

Petitions are filed with the secretary of state who transmits them to the legislature. In some states petitions must be filed at least ten days before the commencement of any session of the legislature; in others, not less than thirty days before the commencement of any *regular* session; in Maine, at least thirty days before the close of a legislative session.

The legislature is directed to act upon measures so submitted to it, in some states within forty days; in Ohio within four months; in Maine and Washington at any time during the session. In a number of states such measures take precedence of all others except appropriation bills, until disposed of. In most states the legislature must enact or reject the initiated measure without change or amendment.

In several states the legislature may refer any initiated measure to the electorate; in South Dakota it must be submitted to the people by the legislature; in Maine, if the Governor vetoes the measure and his veto is sustained, the measure goes to the voters.

In most states the failure of the legislature to enact the initiated measure, or to act upon it within the prescribed period, automatically

requires its submission to the voters, but in Ohio a supplemental petition signed by the same number of voters as signed the original petition must be filed within ninety days after rejection of the measure or after the lapse of the period allowed for legislative action. If no such supplementary petition is filed there is no submission to the voters. If the legislature enacted the initiated measure with amendments the supplementary petition may require the submission of the measure as enacted by the legislature to be submitted at the polls, rather than the measure as originally suggested. In the latter event, the act of the legislature is not operative until approved by the voters.

In many states the legislature may propose a substitute for the initiated measure, in which event the initiated measure and the substitute suggested by the legislature are submitted to the electors at the same election.

(c) FOR THE OPERATION OF THE REFERENDUM.

Referendum procedure is very similar to the procedure established for the use of the initiative. Measures are referred as well as initiated by petition, except that, as previously pointed out, the legislature may, in a number of states, voluntarily submit measures to popular vote.

It is customary in states in which the referendum power is reserved to the voters, to provide that measures subject to referendum, "except in case of emergency" shall go into effect within sixty or ninety days after the final adjournment of the legislative session at which enacted. This provision is obviously intended to enable referendum petitions to be prepared, circulated and filed, before legislative action takes effect.

Referendum petitions in most states require a smaller percentage of signers than initiative petitions. The most popular percentage is five. Maine requires at least ten thousand signers; Washington six per cent. of the voters but not more than thirty thousand. In Ohio Montana, Missouri, North Dakota, Nebraska and Maine, there are

provisions requiring a stated percentage of the signers to be residents of a specified number of the states' geographical or political subdivisions.

Generally speaking, the filing of a referendum petition suspends the operation of a law until approved by the electors; but in several states a petition to have this effect must be signed by an extraordinary number of voters,—fifteen per cent. in Montana and twenty-five per cent. in New Mexico.

"Emergency measures" which are either entirely exempt from submission to the electorate by referendum petition, or if subject to submission, are operative until rejected at the polls, are carefully defined in practically all constitutions. In some states, the legisla- may declare any measure to be an emergency measure, but in most states, the constitution specifically limits the measures which may be so termed.

In Michigan any appropriation act is an "emergency measure," in Arizona and South Dakota, measures for the support of the state government and state institutions come within the emergency class; in a number of states, "measures immediately necessary for the preservation of the public peace, health or safety." This last general classification is limited, in California, so as to exclude any measure creating or abolising any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege; and in Maine to exclude (1) any infringement of the right of home rule for municipalities, (2) any franchise or license to a corporation or individual to extend over a period exceeding one year, or (3) any provision for the sale, purchase or renting for more than five years, of real estate.

"Emergency measures" must contain a statement that they are such, and in some states, the facts constituting the emergency must also be stated. They are usually required to pass the legislature by a two-thirds vote.

Referred measures, except emergency measures, become effective, in most states, upon approval by the electors, but in Maine, thirty days after the Governor shall have announced by proclamation, that the voters approved. "Emergency measures," as previously stated, remain effective until rejected by the voters or repealed by the legislature.

As a general rule, acts of the legislature referred to and ratified by the electors, may be amended at will by subsequent legislatures; but the Nevada Constitution provides that only direct vote of the people can alter, amend or repeal a measure which has been sanctioned at the polls.

PUBLICITY FOR INITIATED AND REFERRED MEASURES.

In Oregon, California, Ohio and a number of other states having the initiative and referendum, a pamphlet is prepared by the state and mailed to each registered voter containing (1) the full text of all proposed laws, referred acts of the legislature and proposed constitutional amendments to be voted upon at an ensuing election; (2) a brief explanation of each proposed or referred law or amendment; and (3) brief arguments for and against each proposed or referred measure. In California the presiding officer of the senate designates the persons who shall prepare the opposing arguments on the measures to be submitted; in Ohio, the legislature attends to this detail if in session,—otherwise the Governor.

The publication and circulation of a compact, readable pamphlet of this character is regarded, by friends of the initiative and referendum, as a very essential requirement. Upon first impression it would appear that the cost of giving publicity of this sort to measures to come before the electors would be prohibitive in a populous state such as Pennsylvania. Actual investigation of the cost of this form of publicity in states having the initiative and referendum, and of the present method of advertising constitutional amendments in this state, indicates conclusively that, for the same number of laws or

amendments, the circulation of a state pamphlet would be no more expensive than newspaper advertising.

Actual investigation in initiative and referendum states has also demonstrated the fact that the so-called "state pamphlet" is very extensively read, in part at least, by the voters. Probably a very small percentage of the electors read the pamphlet from cover to cover, but those in a position to know, state that a large number of persons familiarize themselves with the details and study the merits and demerits of at least some of the measures upon which they are to vote.

PERCENTAGE VOTING ON INITIATED AND REFERRED MEASURES.

A table is hereto appended showing the vote cast on all measures initiated and referred to the voters under the initiative and referendum since 1914. The percentage of those voting for candidates for office, who give expression to their views on measures, is shown. It will be observed that while, upon some measures, the vote is comparatively small, the average vote cast is suprisingly high.

ACTUAL OPERATION OF THE INITIATIVE AND REFERENDUM.

By reference to the table hereto appended, the reader may gather at a glance a fairly accurate idea of the nature of the measures initiated and referred and of the action of the electorate thereon. As might be expected, measures of every variety find their way to the ballot; but the voters in all states would seem to be rather conservative in so far as concerns the adoption of radical or fantastic laws or amendments. Speaking generally, a smaller percentage of measures proposed by initiative petition succeeds in winning popular approval, than of measures submitted to the people by the legislature or referred by petition, after passage by the legislature.

For the statistics in Exhibit A, which set forth in detail the results of the operation of the initiative and referendum since January 1, 1914, I am indebted to Mr. Judson King, Executive Secretary of the National Popular Government League of Washington, D. C.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

APPENDIX

INITIATIVE AND REFERENDUM RESULTS.

General Election of 1914.

I. Status.

Fifteen states had workable Initiative and Referendum provisions in their Constitutions at this time.

All made use of them excepting Nevada.

One state, Maryland, had Referendum only, but did not use it.

II. Number of Measures Submitted.

By initiative petition,	91	
By Referendum Petition,	23	
Total by Initiative and Referendum Petition,		114
By the Legislatures,		75
Grand Total,		189

III. Adoption and Rejection of Measures.

	Adopted	Rejected	Totals
Proposed by Initiaive Petition,	25	66	91
Proposed by Referendum Petition,	9	14	23
Submitted by State Legislatures,	33	42	75
Totals,	67	122	189

IV. The Vote Cast Upon Measures.

(As compared with vote for Candidates in State Elections.)

Average percent of vote cast upon highest measures, all states,	89
Average percent of vote cast upon lowest measures,	66
Average percent of vote cast upon ALL measures,	74

ARIZONA.

General Election, November 3, 1914.

Total Vote for Governor, 51,007.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Prohibition Amendment,	25,887	22,743	3,144	96	Adopted
2. Amendment limiting prohibition elections to eight year periods,	16,059	26,437	10,398	83	Reject'd

		Yes.	No.	Majority.	% Vote.	Result.
3.	Amendment, $5,000,000 bonds for state highways, ...	13,215	23,499	9,284	72	Reject'd
4.	Amendment, I. & R. Measures not to be vetoed, amended or repealed, ...	16,567	16,484	83	65	Adopted
5.	Amendment creating a state reclamation service, ...	14,701	17,994	3,293	64	Reject'd
6.	Statute requiring that 80% of the employes of any company or individual be qualified voters or native born citizens of the U. S., ...	25,017	15,323	10,894	77	Adopted
7.	Statute for old age and mothers pensions, ...	25,827	12,394	13,433	75	Adopted
8.	Statute abolishing capital punishment, ...	18,129	19,381	1,252	74	Reject'd
9.	Statute creating Miami County,	5,878	30,055	24,177	74	Reject'd
10.	Statute forbidding blacklisting,	18,207	17,444	763	70	Adopted
11.	Statute on taxation—owner of property may assess his own property, but state reserves right to take over property at valuation so assessed, ...	13,032	21,277	8,245	67	Reject'd
12.	Statute making appropriation for California Exposition of 1915, ...	10,995	22,434	11,439	65	Reject'd
13.	Statute establishing state contract system, state banking system and printing plant, .	16,754	15,853	901	64	Adopted
14.	Statute regulating electrical construction, ...	18,871	12,256	6,615	61	Adopted
15.	Statute for semi-annual payment of taxes, ...	13,842	15,934	2,192	58	Reject'd
	By Referendum Petition:					
1.	Statute for 3 cent per mile railroad fare, ...	20,968	12,210	8,758	65	Adopted
2.	Statute regulating the changing of county seats, ...	14,255	17,740	3,485	65	Reject'd
3.	Statute regulating creation of new counties, ...	10,756	21,152	10,396	63	Reject'd
4.	Statute regulating pardons and reprieves of criminals and creating state board of pardons and paroles, ...	15,425	13,554	1,971	57	Adopted
	By the Legislature: NONE.					

ARKANSAS.

General Election, November 3, 1914.

Total Vote for Governor, 135,517.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment raising the bond limit of municipalities, ... (Note: Amendments required majority of all votes cast at election. Hence this amendment failed.)	54,782	40,441	14,341	70	Reject'd
2. Statute prohibiting child labor,	72,313	25,300	47,013	72	Adopted
3. Statute for newspaper publicity on submitted measures, ...	55,552	40,728	14,824	71	Adopted
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment fixing the salary of members of the Legislature, ...	43,919	49,101	5,182	68	Reject'd
2. Amendment for election of lieutenant governor, ...	46,572	45,206	1,366	68	Adopted

CALIFORNIA.

General Election, November 3, 1914.

Total Vote for Governor, 926,754.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment abolishing poll tax,	405,375	374,487	30,888	84	Adopted
2. Amendment enlarging deposits of public moneys in banks by broadening kinds of security by banks to state, ...	236,573	324,558	87,985	60	Reject'd
3. Amendment for city and county consolidation and annexation of contiguous territory, ...	248,112	318,224	70,112	61	Reject'd
4 Amendment regulating annexation of contiguous territory in event of consolidation of city and county government,	293,901	287,185	6,716	63	Adopted
5. Amendment for Prohibition, ..	365,536	524,781	159,245	95	Reject'd
6. Amendment that Prohibition if carried as above, be suspended until Feb. 15, 1915,	448,648	226,688	221,960	73	Adopted
7. Amendment prohibiting a prohibition election for eight years, ...	355,394	435,701	80,307	86	Reject'd

		Yes.	No.	Majority.	% Vote.	Result.
8.	Amendment for property qualification for voters at bond elections,	312,193	337,951	25,758	70	Reject'd
9.	Bond issue of $1,250,000 for proposed State buildings at Los Angeles,	285,796	320,302	34,506	65	Reject'd
10.	Bond issue of $1,800,000 for completion and construction of buildings for University of California,	413,020	239,332	173,688	70	Adopted
11.	Statute for universal 8-hour day,	282,692	560,881	278,189	91	Reject'd
12.	Statute abolishing professional prize fighting; permit amateur boxing,	413,741	327,569	86,172	80	Adopted
13.	Statute regulating investment companies (Blue Sky law proposed by investment companies),	249,500	353,812	104,312	65	Reject'd
14.	Statute establishing Torrens land title system,	359,757	224,846	134,911	63	Adopted
15.	Statute for 1 day of rest in 7; Sunday law,	290,679	457,890	167,211	81	Reject'd
16.	Statute for drugless practice,	223,217	462,335	239,138	74	Reject'd
17.	Statute permitting absent electors to vote,	244,855	390,333	145,478	68	Reject'd
	By Referendum Petition:					
1.	Red Light abatement act,	402,629	352,821	49,808	81	Adopted
2.	Statute (Blue Sky) regulating investment companies (referred by investment companies),	343,805	288,084	55,721	68	Adopted
3.	Act for nonsale of game,	353,295	361,446	8,151	77	Reject'd
4.	Act creating state water commission,	309,954	301,817	8,137	66	Adopted
	By the Legislature:					
1.	Amendment abolishing appeal to higher courts of civil and criminal cases upon merely technical grounds,	378,237	182,073	196,164	60	Adopted
2.	Amendment permitting public bonds or interest thereon to be paid at any place inside or outside of state,	306,195	206,479	99,716	55	Adopted
3.	Amendment exempting from taxation educational institutions of collegiate grade,	331,599	293,721	37,878	67	Adopted
4.	Amendment permitting state, county or municipality to condemn neighboring property or land for public purposes,	259,192	307,155	47,963	61	Reject'd
5.	Amendment exempting from taxation until 1935 vessels of over 50 tons burden,	359,176	301,969	57,207	71	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
6. Amendment permitting Alameda county to vote $1,000,000 bonds for World's Fair, ...	390,833	202,128	188,705	64	Adopted
7. Amendment authorizing municipalities to own and operate public utilities, ...	231,274	278,129	46,855	55	Reject'd
8. Amendment providing that when a city acquires lands outside its boundaries, it shall pay taxes to county thereon, ...	344,432	216,612	127,820	60	Adopted
9. Amendment authorizing municipalities and counties to exempt from taxation for local purposes in whole or part, personal property of certain kinds, ...	267,318	375,634	107,316	69	Reject'd
10. Amendment permitting adoption of preferential ballot in party primaries, ...	240,600	294,265	53,665	57	Reject'd
11. Amendment increasing assembly pay roll expenses, ...	87,315	494,272	506,957	63	Reject'd
12. Amendment establishing home rule in adoption of municipal charters, ...	285,338	226,679	58,659	55	Adopted
13. Amendment authorizing governor to call extra sessions of district courts of appeal, ...	203,674	322,891	119,217	57	Reject'd
14. Amendment giving legislature increased control of irrigation, reclamation and drainage districts, ...	335,047	216,865	118,182	59	Adopted
15. Amendment permitting assumption by county officers of certain municipal functions, ...	261,219	225,530	35,689	52	Adopted
16. Amendment changing home-rule amendment; grants municipalities jurisdiction in all local affairs without need of specifying them in city charter, ...	284,757	214,312	70,445	54	Adopted
17. Amendment giving state railroad commission power to fix public-utility rates in municipalities, ...	291,665	260,589	31,076	59	Adopted
18. Amendment permitting irrigation districts to own stock in foreign corporations, ...	349,684	185,168	164,516	58	Adopted
19. Amendment empowering State railroad commission to fix value of a condemned public utility upon request of a municipality, ...	291,836	244,379	47,457	57	Adopted
20. Amendment changing method of election of and procedure in, constitutional conventions, ..	271,896	274,325	2,429	59	Reject'd
21. Amendment authorizing legislature to establish minimum wage for women and minors,	379,311	295,109	85,202	73	Adopted

		Yes.	No.	Majority.	% Vote.	Result.
22.	Amendment for direct election of U. S. Senators, ...	404,283	190,969	213,314	64	Adopted
23.	Resolution calling convention to revise state constitution, .	180,111	442,687	262,576	67	Reject'd
24.	Bond issue, $3,000,000 for additional state buildings in Sacramento, ...	294,728	267,717	27,011	61	Adopted
25.	Bond isue, $1,000,000 for State buildings in San Francisco, ...	300,028	257,119	42,909	60	Adopted
26.	Bond issue, $750,000 to improve State Fair Grounds at Sacramento, ...	301,764	259,721	42,042	60	Adopted
27.	Bond issue, San Francisco Harbor improvements, ...	408,644	167,589	241,055	62	Adopted

COLORADO.

General Election, November 3, 1914.

Total Vote for Governor, 266,871.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Amendment for Prohibition, ..	129,589	118,017	11,572	93	Adopted
2.	Amendment prohibiting the initiative measure again within six years, ...	55,667	112,537	56,870	63	Reject'd
3.	Amendment authorizing three-fourths verdict by juries in civil cases and allowing them to serve as jurors, ...	67,130	77,488	10,358	54	Reject'd
4.	Amendment making public utilities of newspapers, ...	35,752	91,426	55,674	48	Reject'd
5.	Amendment authorizing special elections for I. and R. measures at call of governor on 25 per cent. petition, ...	40,643	90,977	50,334	49	Reject'd
6.	Statute levying half mill road tax annually, ...	117,146	54,844	62,302	64	Adopted
7.	Statute for a child welfare commission, ...	68,242	72,122	3,880	53	Reject'd
8.	Statute for probation of criminals, ...	62,561	68,512	5,951	49	Reject'd
9.	Statute abolshing "assumption of risk" as a legal doctrine, .	69,006	60,298	8,708	48	Adopted
	By Referendum Petition:					
1.	Statute that deputy sheriffs must be electors in those counties wherein they are appointed, ...	49,116	66,836	17,720	43	Reject'd
2.	Statute regulating fruit commission men, ...	39,448	67,454	28,006	40	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
3. Statute establishing a public utility commission (urged by the corporations), ...	39,703	65,182	25,479	39	Reject'd
4. To refer Sections 35, 36, and 37 of Public Utility law as above, ...	37,663	63,603	25,940	38	Reject'd
By the Legislature:					
1. Amendment giving greater powers to State Board of Equalization, ...	55,987	55,275	712	42	Adopted
2. Amendment giving power to cities and towns to issue 60-year bonds, ...	39,589	65,206	25,617	39	Reject'd
3. Amendment for publicity pamphlets in advertising submitted measures, ...	48,301	56,259	7,958	39	Reject'd

MAINE.

General Election, November 3, 1914.

Total Vote for Governor, 141,592.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition:					
1. Statute creating Public Utilities Commission for regulation and control of public utilities, ..	67,365	37,008	30,357	74	Adopted
By the Legislature: NONE.					

MICHIGAN.

General Election, November 3, 1914.

Total Vote for Governor, 440,488.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment defining and regulating fraternal insurance societies, ...	92,392	291,766	199,374	87	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for absent voting,	190,510	175,948	14,562	83	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
2. Amendment, bond issue for road construction and improvements,	164,333	202,087	37,754	83	Reject'd
3. Amendment empowering counties to issue bonds for drain and improvements of farm land,	165,290	199,873	34,583	83	Reject'd

MISSOURI.

General Election, November 3, 1914.

Total Vote for Governor, 618,194.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for Woman Suffrage,	182,257	322,463	140,206	81	Reject'd
2. Amendment, $50,000,000 issue of road bonds,	76,574	378,530	301,956	73	Reject'd
3. Amendment for local option in road districts on raising funds for roads,	80,935	373,302	292,367	73	Reject'd
By Referendum Petition;					
1. Statute for full train crew,	159,892	324,384	164,492	78	Reject'd
2. Statute making counties the units in locol option elections,	172,909	311,285	138,376	78	Reject'd
3. Statute substituting bi-partisan board for police commissioner in large cities,	131,382	306,942	175,560	70	Reject'd
4. Statute substituting appointed bi-partisan board for excise commissioners in large cities,	134,449	303,757	169,308	70	Reject'd
By the Legislature:					
1. Amendment changing and limiting the initiative and referendum amendment of 1908,	138,039	334,310	196,271	76	Reject'd
2. Amendment, pensions for the blind,	214,951	255,717	40,766	76	Reject'd
3. Amendment 10 cents per $100 property tax for good roads,	112,497	346,995	234,498	74	Reject'd
4. Amendment, special road levy with local option relation,	117,041	333,576	216,535	72	Reject'd
5. Amendment, increase pay of legislators,	89,629	355,326	265,697	71	Reject'd
6. Amendment to raise debt limits of Kansas City to permit municipal ownership of public utilities,	123,596	312,651	189,055	70	Reject'd
7. Amendment permitting increased tax rate in cities for subway purposes,	117,197	316,959	199,762	70	Reject'd
8. Amendment to simplify charter changes for cities,	140,475	290,562	150,087	69	Reject'd

MONTANA.

General Election, November 3, 1914.

Total Vote for Congressmen, 81,502.

	By Initiative Petition:	Yes.	No.	Majority.	% Vote.	Result.
1.	Workmen's Compensation Act,	36,991	44,275	7,284	99	Reject'd
2.	Statute to Consolidate the state universities and colleges, ...	30,465	46,311	15,846	92	Reject'd
3.	Statute for Farm Loan act, ..	45,162	27,780	17,282	89	Adopted
	By Referendum Petition:					
1.	Statute permitting boxing contests and creating state commission to regulate, ...	34,440	42,581	8,141	93	Reject'd
	By the Legislature:					
1.	Amendment for Woman Suffrage, ...	41,302	37,588	3,814	96	Adopted
2.	Amendment for increase in school tax levy, ...	28,703	46,265	17,762	91	Reject'd

NEBRASKA.

General Election, November 3, 1914.

Total Vote for Governor, 238,693.

	By Initiative Petition:	Yes.	No.	Majority.	% Vote.	Result.
1.	Amendment for Woman Suffrage, ...	66,883	148,110	81,227	90	Reject'd
	By Referendum Petition:					
1.	Removal of University and consolidation with other state colleges, ...	90,738	100,842	10,104	79	Reject'd
2.	Statute for Workman's Compensation, ...	92,513	85,777	6,736	74	Adopted
3.	Statute creating an armory in a certain county and appropriating money therefor, ...	40,520	133,451	92,931	72	Reject'd
	By the Legislature:					
1.	Amendment for uniform taxation, ...	88,068	82,136	6,932	71	Adopted
2.	Amendment for five-sixths for jury verdict in civil cases and criminal cases under felonies,	103,891	63,596	38,295	70	Adopted
3.	Amendment fixing terms of office and salaries for state officials, ...	89,385	76,013	13,372	69	Adopted

NEVADA.

General Election, November 3, 1914.

Total Vote for Congressman, 20,626.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for Woman Suffrage,	10,618	7,179	3,439	86	Adopted
2. Amendment omitting from the official oath the requirement that the one taking it never fought a duel,	9,859	3,630	6,129	65	Adopted

NEW MEXICO.

General Election, November 3, 1914.

Total Vote Not Obtainable.

Total Vote for Governor, 1916, 66,551.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: (Note: The constitution provides no initiative.)					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment prohibiting county officials from serving more than two terms,	20,282	18,486	1,814	58	Adopted
2. Amendment to revise revenue system of the state,	18,468	13,593	4,875	48	Adopted
3. Amendment prohibiting state executive officers to hold office for more than two terms,	18,474	12,257	6,217	46	Adopted

OHIO.

General Election, November 3, 1914.

Total Vote for Governor, 1,130,651.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment on home rule on the subject of intoxicating liquors (proposed by the wets), ...	554,548	546,248	8,300	97	Adopted
2. Amendment for state-wide prohibition (proposed by the drys), ...	503,292	586,663	83,371	96	Reject'd
3. Amendment for Woman Suffrage, ...	334,160	517,611	183,451	75	Reject'd
4. Amendment forbidding classification of property for tax purposes, ...	224,598	551,977	327,379	68	Reject'd
By Referendum Petition: NONE.					
By the Legislature: NONE.					

OKLAHOMA.

State-wide Primary Election, August 4, 1914.

Total Vote 182,145.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute to re-enact direct system of taxation, ...	88,994	45,232	43,762	73	Reject'd
(Note: Lacked 2,078 votes of Constitutional Majority.)					
2. Amendment to make drunkenness cause for removal from office,	114,833	31,659	83,174	80	Adopted
(Note: Const. Majority 23,761.)					
By Referendum Petition:					
1. Statute to abolish gambling and slot machines, ...	73,770	67,562	6,208	77	Adopted
2. Statute to abolish gambling and horse racing, ...	76,695	68,875	7,817	79	Adopted
By the Legislature:					
1. Amendment giving legislature certain powers in levying taxes in aid of common schools, ..	89,653	56,918	32,735	80	Reject'd
(Note: Lacked 1,419 votes of constitutional majority.)					

OKLAHOMA—2.

General Election, November 3, 1914.

Total Vote for Governor, 253,682.

By Initiative Petition:	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment reducing number of appellate courts,	105,529	64,782	40,747	67	Reject'd
2. Amendment to reduce state tax levy,	117,675	57,120	60,555	68	Reject'd
3. Amendment for tax on mine production,	107,342	62,380	44,962	66	Reject'd
4. Amendment for uni-cameral legislature,	94,686	71,742	22,944	65	Reject'd

(Note: All the abovee failed of adoption, not having received a constittuional majority of all votes cast "in the election," as provided in the Oklahoma Constitution for amendments submitted by the legislature or any measure proposed by initiative petition.

Referendum measures for adoption require a majority of the vote cast "on the measure."

OREGON.

General Election, November 3, 1914.

Total Vote for Governor, 210,566.

By Initiative Petition:	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment for eight hour work day,	49,360	167,883	118,523	103	Reject'd
2. Amendment for $1,500 tax exemption,	65,495	136,193	70,698	96	Reject'd
3. Amendment prohibiting sale of river beds, reserving same for municipal docks,	67,110	111,113	44,003	85	Reject'd
4. Amendment for state-wide prohibition,	136,842	100,362	36,480	112	Adopted
5. Amendment abolishing capital punishment,	100,552	100,395	157	95	Adopted
6. Amendment for a specific graduated personal extra tax,	59,186	124,943	65,757	87	Reject'd
7. Amendment extending terms of county officers from two to four years,	82,841	107,039	24,198	90	Reject'd
8. Amendment for proportional representation,	39,740	137,116	97,376	84	Reject'd

		Yes.	No.	Majority.	% Vote.	Result.
9.	Amendment to abolish state senate,	62,376	123,429	61,053	88	Rejected
10.	Amendment creating state department to give work to unemployed,	57,859	126,201	68,342	87	Reject'd
11.	Amendment for the qual assessments and taxation of all property with $300 exemeption,	43,289	140,507	97,218	87	Reject'd
12.	Statute for eight hour day for women workers,	88,489	120,296	31,807	99	Reject'd
13.	Statute for non-partisan nominations for judges,	74,323	107,263	32,940	86	Reject'd
14.	Statute permitting cities to construct and operate municipal wharves and docks,	67,128	104,564	37,436	81	Reject'd
15.	Statute consoliadting offices of the corporation commissioner and the insurance commissioner,	55,469	120,154	64,685	83	Reject'd
16.	Statute reeducing requirements for practice of dentistry,	92,722	110,404	17,682	96	Reject'd
17.	Statute for appointive commission to prepare new tax code for submission to legislature,	34,436	143,468	109,032	84	Reject'd
18.	Statute abolishing desert land transfering duties to state land board and transfering duties to state land board,	32,701	143,366	110,665	84	Reject'd
19.	Statute creating an elective nominating convention to propose nominees for regular primaries,	25,057	153,638	128,581	85	Reject'd
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Amendment creating office of Lieutenant Governor,	52,040	143,804	91,764	93	Reject'd
2.	Amendment requiring voters in Oregon to be citizens of the United States,	164,879	39,947	125,032	97	Adopted
3.	Amendment permitting consolidation of city and county governmeent,	77,392	103,194	25,802	86	Reject'd
4.	Amendment permitting state to lend credit for road construction,	49,759	135,550	85,791	88	Reject'd
5.	Amendment omitting that "all taxes be equal and uniform" and providing for levy and collection under general law,	59,206	116,490	57,284	83	Reject'd
6.	Amendment providing for classification of property for tax purposes,	52,362	122,704	70,342	83	Reject'd
7.	Amendment increasing pay of legislators,	41,087	146,278	105,191	89	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
8. Statute for tax levy to re-establish normal school at Ashland, southern Oregon, ...	84,041	109,643	25,602	94	Reject'd
9. Statute for tax levy to re-establish state school at Weston, ..	87,450	105,345	17,895	91	Reject'd

SOUTH DAKOTA.

General Election, November 3, 1914.

Total Vote for Governor, 98,141.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute for new primary election law, ...	37,106	44,697	7,591	83	Reject'd
2. State amending local option law, ...	38,000	51,779	13,779	91	Reject'd
3. Statute amending charter and fixing a course of study at Aberdeen normal school, ...	27,538	49,382	21,844	78	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for Woman Suffrage, ...	39,605	51,519	11,914	93	Reject'd
2. Amendment reducing interest on school fund loans, ...	45,554	35,102	10,452	82	Adopted
3. Amendment removing the limit from the term of county superintendents of schools, ...	32,092	45,733	13,641	79	Reject'd
4. Amendment permitting legislature to fix percentage on petitions for initiative and referendum in municipailties, ...	28,266	43,162	14,936	73	Reject'd
5. Amendment providing state board for charitable and penal institutions, ...	29,601	44,107	14,506	75	Reject'd
6. Amendment providing for four year terms for legislators, ..	29,746	45,051	15,305	76	Reject'd
7. Amendment authorizing legislature to select substitute judge on supreme bench when a member is an interested party, ...	36,317	36,543	226	74	Reject'd
8. Amendment authorizing cities and counties to construct and operate irrigation works, ..	32,958	40,457	7,499	75	Reject'd
9. Resolution for a constitutional convention, ...	34,832	51,585	16,573	88	Reject'd

WASHINGTON.

General Election, November 3, 1914.

Total Vote for U. S. Senator, 345,279.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute for state-wide prohibition,	189,840	171,208	18,632	104	Adopted
2. Statute, "blue sky" law against sale of fraudulent stocks,	142,017	147,298	5,281	84	Reject'd
3. Statute to abolish the bureau of inspection of public offices,	117,882	167,080	49,198	82	Reject'd
4. Statute prohibiting private employment agencies from charging fees for service to working men,	162,054	144,544	17,510	89	Adopted
5. Statute requiring employers to provide first aid in the more hazardous employments,	143,738	154,166	10,428	86	Reject'd
6. Statute for convict road work,	111,805	183,726	71,921	85	Reject'd
1. Statute for universal eight hour day,	118,881	212,935	94,054	96	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment providing against alien land ownership,	55,080	212,542	157,462	77	Rejeect'd
2. Statute providing irrigation system for Quincy Valley,	102,315	189,065	86,750	85	Reject'd
3. Statute creating a teachers retirement fund,	59,051	252,356	193,305	90	Reject'd

SPECIAL ELECTION OF 1915.

CALIFORNIA.

Special Election, October 26, 1915.

Ordered by the Legislature. For Measures Only.

Highest Vote on Any Measure, 269,648.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition:					
1. Statute extending the principle of "nonpartisan" elections to state officers,	112,681	156,967	34,386	100	Reject'd

		Yes.	No.	Majority.	% Vote.	Result.
2.	Statute establishing "nonpartisan" ballot in state primaries,	106,377	151,067	44,690	95	Reject'd
	By the Legislature:					
1.	Amendment to increase term of superior court judges from 6 to 12 years,	47,229	213,067	165,838	96	Reject'd
2.	Amendment, term of judges filling vacancies,	124,610	125,124	514	93	Reject'd
3.	Amendment, rural credits; to permit the state to loan its credits to private persons and corporations,	124,247	132,320	8,073	95	Reject'd
4.	Amendment, regulating deposit of public moneys,	92,981	151,845	58,864	91	Reject'd
5.	Amendment requiring bond issues to be carried by two-thirds vote,	121,210	127,160	5,950	92	Reject'd
6.	Amendment permitting cities to condemn land for park purposes,	92,048	155,786	63,738	92	Reject'd
7.	Amendment to permit legislature to adopt new taxation system,	42,158	201,597	159,439	90	Reject'd
8.	Amendment exempting churches from taxation when admission is charged for entertainments,	94,460	168,171	73,711	97	Reject'd
9.	Amendment, county charters,	85,571	152,697	67,126	88	Reject'd

OHIO.

Special Election, November 2, 1915.

Ordered by the Legislature. For Measures Only.

Highest Vote on Any Measure, 1,025,346.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Amendment for state-wide prohibition,	484,969	540,377	55,408	100	Reject'd
2.	Amendment, quadrennial elections for all county officers,	207,435	604,463	397,028	89	Reject'd
3.	Amendment, exemption of state and local bonds from taxation,	337,124	401,083	63,959	72	Reject'd
4.	Amendment that after a second defeat at the polls no proposal should be submitted to the voters either by the legislature or by initiative for six years. ("Stability amendment" proposed by wets),	417,384	482,275	64,891	88	Reject'd

By Referendum Petition:	Yes.	No.	Majority.	% Vote.	Result.
1. Statute to reapportion the Congressional districts of the state,	291,987	329,095	37,108	61	Reject'd
2. Statute to vest licensing and control of liquor traffic in county boards instead of state control. Wet measure,	242,671	355,207	112,536	58	Reject'd

By the Legislature:
NONE.

GENERAL ELECTIONS OF 1916.

I. STATUS.

14 states used the Initiative and Referendum in these elections.

3 states had the Initiative and Referendum, but did not use them. (Ohio, Mississippi and Nevada.)

2 states had the Referendum, but did not use it. (Maryland and New Mexico.)

II. NUMBER OF MEASURES SUBMITTED.

By Initiative Petitions:		
Constitutional amendments,	37	
Statute laws,	21	
		58
By Referendum Petitions,		12
Total by Initiative and Referendum,		70
Referred by the Legislatures:		
Constitutional amendments,	23	
Statutes and resolutions,	5	
		28
Grand total,		98

III. ADOPTIONS AND REJECTIONS.

	Adopted.	Rejected.	Totals.
Proposed by Initiative Petitions,	15	43	58
Referred by Referendum Petitions,	4	8	12
Referred by the State Legislatures,	16	12	28
Totals,	35	63	98

IV. THE VOTE CAST UPON MEASURES.

(Compared with vote for candidates.)

Average percent of vote cast on highest measures,	91.2
Average percent of vote cast on lowest measures,	68.8
Average percent of vote cost on all measures,	78.6

ARIZONA.

General Election, November 7, 1916.

Total Vote for Governor, 58,293.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Amendment prohibiting liquor to be imported into state, ...	28,473	17,379	11,094	78.6	Adopted
2.	Amendment to elect representatives to State Legislature from small districts in each county of approximately 1,500 voters each. Now elected at large from counties by fixed number, from 1 to 6.	15,731	17,921	2,190	57.7	Reject'd
3.	Amendment for "local option" to displace state-wide prohibition, ...	13,377	29,934	16,557	74.3	Reject'd
4.	Amendment for a workmen's compensation law. (Not (?) supported by organized labor).	18,061	21,255	3,194	67.5	Reject'd
5.	Amendment abolishing capital punishment, ...	18,936	18,784	152	65.0	Adopted
7.	Statute creating Department of Labor and Board of Arbitration to act with Commissioner of Labor, ...	13,798	21,492	7,694	58.8	Reject'd
8.	Statute creating office of State Architect, ...	10,010	25,960	15,950	62.0	Reject'd
9.	Statute protecting wild game and fixing game season, etc.,	17,518	16,849	669	60.0	Adopted
10.	Statute increasing causes of divorce, ...	13,564	18,097	4,533	54.3	Reject'd
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Amendment to require a majority of all votes cast necessary to enact any measure submitted by Initiative or Referendum petition, ...	18,356	18,961	605	64.2	Reject'd
2.	Amendment raising the tax exemption limit on property of widows, ...	14,296	16,882	2,586	53.4	Reject'd

Highest percent of vote cast on any question. 97.6

Lowest percent of vote cast on any question. 76.8

Average percent of vote cast on all questions, ... 87.6

ARKANSAS.

General Election, November 7, 1916.

Total Vote for Governor, 167,505.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Improved direct primary and state election law, ...	93,745	48,033	45,712	84.6	Adopted
2. Local option law to displace statutory state-wide prohibition. Initiated by liquor interests, ...	58,278	105,279	47,001	97.6	Reject'd
3. Amendment permitting Legislature to authorize school districts by vote to increase limit of school debt, ...	108,892	48,579	60,313	94.0	Adopted
4. Improvved Initiative and Referendum Amentment, ...	68,721	73,962	5,241	85.2	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment permitting county courts to levey 3-mill road tax,	82,503	66,150	16,353	76.8	Reject'd

NOTE:—Constitution amendments require majority of "all votes cast" for adoption.

Highest percent of vote cast on any question, ... 97.6

Lowest percent of vote cast on any question, ... 76.8

Average percent of vote cast on all questions, ... 87.6

CALIFORNIA.

General Election, November 7, 1916.

Total Ballots Cast, 1,045,858.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment prohibiting any member of Legislature from holding any other civil office of profit under the State during his term of office, ...	414,208	230,260	183,948	61.6	Adopted
2. Amendment prohibiting manufacture or sale of intoxicating liquors, to take effect 192—.	436,639	538,200	101,561	93.2	Reject'd
3. Amendment for partial prohibition; abolishes saloons; permits importation to individuals at residence only in 2 gallon lots, or more, permits manufacture and export of wines, etc., ...	461,039	505,783	44,744	92.5	Reject'd
4. Amendment for single tax on land vvalues, ...	260,332	576,533	316,201	80.0	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
By Referendum Petition:					
1. Amendment act to primary law permitting vvoters to declare party affiliation on election day instead of at the time of registration,	319,559	349,723	30,164	63.9	Reject'd
By the Legislature:					
1. Bond issue of $15,000,000 for completion of state highway system,	542,239	137,107	405,132	64.8	Adopted
2. Act amending the state highway law of 1909 empowering the State Advivsory Engineering Board to equalize among counties the interest burden of highway bonds,	483,151	152,910	330,241	60.8	Adopted

Highest percent of vote cast on any question, ... 93.2

Lowest percent of vote cast on any question, ... 60.8

Average percent of vote cast on all questions, ... 73.8

COLORADO.

General Election, November 7, 1916.

Total Vote for Governor, 285,215.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for civil service, ..	62,458	96,561	34,103	55.7	Reject'd
2. Amendment declaring beer a non-intoxicating liquor and permitting its manufacture and sale (State had prohibition),	77,345	163,134	89,789	84.3	Reject'd
3. Statute guaranteeing State care for insane. Board of Corrections forbidden to reject, or limit number,	164,220	39,415	124,805	71.4	Adopted
4. Statute abolishing State Tax Commission and transferring its powers and duties to the State Board of Equalization,	80,362	84,011	3,649	56.2	Reject'd
5. Statute to prohibit stock running at large,	85,279	155,134	69,855	84.3	Reject'd
6. Statute permitting investment of school funds in public securities or unincumbered farm land. Formerly held in banks only,	102,596	66,058	36,898	62.0	Adopted
By Referendum Petition:					
1. Statute establishing a State Medical Board,	96,879	82,317	14,562	65.7	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
By the Legislature:					
1. Resolution proposing convention to revise State Constitution, .	53,530	69,579	16,049	39.6	Reject'd
Highest percent of vote cast on any question....				84.3	
Lowest percent of vote cast on any question.....				39.6	
Average percent of vote cast on all questions....				64.9	

MAINE.

State Election September 11th, 1916.

Total Vote for Governor, 150,843.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition:					
1. Statute limiting the number of hours of employment of women and children to 54 hours in one week, ...	95,591	40,252	55,339	89.3	Adopted
By the Legislature:					
1. Statute providing for State and county aid in building highway bridges, ...	96,677	14,138	82,439	66.8	Adopted
Highest percent of vote cast on any question,...				89.3	
Lowest percent of vote cast on any question,.....				66.8	
Average percent of vote cast on all questions,...				78.1	

MICHIGAN.

General Election, November 7, 1916.

Total Vote for Governor, 651,519.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for State-wide prohibition, ...	353,378	284,754	68,624	97.7	Adopted
2. Amendment for local option (liquor) with townships and municipalities as units,.....	256,272	378,871	122,599	97.5	Reject'd
3. Amendment permitting organization of fraternal insurance societies without compulsory lodge ritual and requiring democratic form of government for fraternal insurance organizations, ...	225,220	349,810	124,590	87.9	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment permitting Legislature to repeal local or special acts passed prior to 1909, without vote of districts affected,	283,823	275,701	8,122	85.8	Adopted

Highest percent of vote cast on any question..... 97.7

Lowest percent of vote cast on any question..... 85.8

Average percent of vote cast on all questions... 92.2

MISSOURI.

General Election, November 7, 1916.

Total Vote for Governor, 785,998.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment creating a State Land Bank for rural credits system, $1,000,000 appropriation for same,	296,964	346,443	49,479	81.8	Reject'd
2. Amendment for State-wide prohibition,	294,288	416,826	122,538	90.5	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment empowering the Legislature to pension the deserving blind,	385,627	272,908	112,719	83.8	Adopted

Highest percent of vote cast on any question,... 90.5

Lowest percent of vote cast on any question,... 81.8

Average percent of vote cast on all questions,... 85.4

MONTANA.

General Election, November 7, 1916.

Total Vote for Governor, 173,572.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute permitting boxing contests under certain regulations,	72,162	76,510	4,348	85.6	Reject'd
By Referendum Petition: NONE.					

By the Legislature:	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment providing for State and county boards of tax equalization,	74,257	60,839	14,318	77.8	Adopted
2. Amendment exempting all church property from taxation (present law exempts all actually used for church services)	48,656	83,198	34,542	76.9	Reject'd
3 Amendment for bond issue of $265,000 for State twine factory,	68,059	79,158	11,099	84.8	Reject'd
4. Amendment for State-wide prohibition,	102,776	73,890	28,886	101.7	Adopted

NEBRASKA.

General Election, November 7, 1916.

Total Vote for Governor, 302,685.

By Initiative Petition:	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment for State-wide prohibition,	146,574	117,132	29,242	87.1	Adopted
2. Amendment to create office of State Food, Dairy, Drug and Oil Commissioner. Abolishes the present Commission and transfers powers,	91,215	105,993	14,778	65.6	Reject'd

By Referendum Petition:
NONE.

By the Legislature:
NONE.

Highest percent of vote cast on any question,... 87.1

Lowest percent of vote cast on any question,... 65.6

Average percent of vote cast on all questions,... 76.4

NORTH DAKOTA.

General Election, November 7, 1916.

Total Vote for Governor, 110,631.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition:					
1. Statute prohibiting any person to sell, buy, or import liquor in State, as principal or agent, except certain persons authorized by law (defines bootlegging), ...	51,673	42,956	8,717	85.5	adopted
2. Statute for repeal of mill tax for terminal elevators,.....	51,889	47,035	4,854	89.4	Adopted
By the Legislature:					
1. Amendment for establishing State Normal Schools,.....	60,582	43,434	17,248	94.0	Adopted
2. Amendment for location of State Hospital for the Insane, ...	49,001	44,356	4,645	93.4	Adopted

Highest percent of vote cast on any question,... 94.0

Lowest percent of vote cast on any question,... 85.5

Average percent of vote cast on all questions,... 90.6

OKLAHOMA.

Primary Election, August 1, 1916.

Total Vote for Justice Supreme Court, 288,111.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment abolishing State Board of Equalization and creating a State Tax Commission, ...	50,656	146,130	85,474	68.3	Reject'd
2. Amendment reducing salary of Clerk of Supreme Court,...	58,933	134,963	75,970	67.4	Reject'd
3. Amendment limiting expenditure by municipalities, etc., for publicly owned utilities to 10% of assessed valuation, and requiring vote of 3-5 of taxpaying voters, ...	44,687	147,933	103,246	66.8	Reject'd
4. Amendment to permit enactment of compulsory compensation law, ...	50,995	139,132	68,137	65.9	Reject'd
5. Amendment to consolidate criminal Court of Appeals with Supreme Court and create an additional Justice, ...	42,896	149,272	108,376	66.7	Reject'd

	Yes.	No	Majority.	% Vote.	Result.
6. Amendment reducing number of jurors required save in capital cases—to 6 or 8, etc., ...	49,954	142,333	92,379	66.7	Reject'd
7. Amendment abolishing county courts and vesting their jurisdiction in district courts,.....	47,194	157,284	110,090	70.9	Reject'd
8. Amendment requiring that corporations pay school taxes proportionate to other property and that the money be deposited with the State (not local) school funds be proportionately distributed in the State, ...	76,095	127,525	51,430	70.7	Reject'd.
9. Amendment for literary test "Grandfather clause,"	90,605	133,140	42,535	77.6	Reject'd

OKLAHOMA.

General Election, November 7, 1916.

Total Vote for President, 304,106.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment election law especially provided for non-partisan election boards, ...	147,067	119,062	27,465	92.5	Reject'd
2. Amendment for new Registration system, ...	140,366	114,824	25,542	88.5	Reject'd

Constitutional requirements of "all votes cast" not received. Case is contested in courts.

By Referendum Petition:
NONE.

By the Legislature:
NONE.

Highest percent of vote cast on any question, .. 92.5

Lowest percent of vote cast on any question, ... 65.9

Average percent of vote cast on all questions, ... 72.9

OREGON.

General Election, November 7, 1916.

Total Vote for President, 261,650.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for single tax on land values, ...	43,390	154,980	111,590	75.8	Reject'd
2. Amendment for locating new State Normal School at Pendleton and appropriating $125,000 therefor, ...	96,829	109,523	12,694	78.9	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
3. Amendment providing for manufacture and sale of 4% malt liquors,	85,973	140,599	54,626	86.6	Reject'd
4. Amendment forbidding importation of intoxicating liquors for beverage purposes,	114,932	109,671	5,261	85.8	Adopted
5. Amendment to establish State Rural Credit System,	107,488	83,887	23,601	73.1	Adopted
6. Amendment to limit State, county and municipal tax and bonding power to a 6% annual increase,	99,536	84,031	15,505	70.2	Adopted
7. Statute repealing the Sunday closing law,	125,836	99,076	32,760	83.3	Adopted
8. Statute to abolish compulsory vaccination,	99,745	100,199	454	78.4	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment permitting Governor to veto single items in appropriation bills,	141,773	83,207	88,566	74.6	Adopted
2. Amendment exempting ships from taxation except by the State for State purposes,	119,652	65,410	54,242	70.7	Adopted
3. Amendment removing from constitution discrimination against right of negroes and mulattoes to vote,	100,027	100,701	674	76.7	Reject'd

Highest percent of vote cast on any question, .. 86.6

Lowest percent of vote cast on any question, ... 70.2

Average percent of vote cast on all questions, .. 77.3

SOUTH DAKOTA.

General Election, November 7, 1916.

Total Vote for Governor, 128,500.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute to repeal a direct primary law enacted by the Legislature of 1915 and substitute the "Richards Primary Law" of 1912 with some changes,	52,410	52,733	323	82.1	Reject'd
2. Statute amending local option liquor law to require absolute majority of voters of any city or township to authorize license, instead of the vote cast "on the question," and permitting only "freeholders" to sign petitions,	49,174	54,422	5,248	81.4	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
3. Statute initiated by the bankers to repeal present guarantee law and substitute their own,	47,715	52,205	4,490	77 7	Reject'd
4. Statute initiated by administration Democrats to repeal present bank guarantee law and substitute another differing from proposed "Bankers' Act,"	47,925	50,226	2,301	76.7	Reject'd
5. Statute authorizing verdict in civil cases by 10 out of 12 jurors,	49,601	51,529	1,908	77.9	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment permitting state to construct good roads and mine and sell coal from state lands to citizens. Requires 2-3 vote of legislature for law,	75,922	33,521	42,401	85.4	Adopted
2. Amendment permitting irrigation projects at expenses of lands irrigated,	58,775	44,238	14,537	80.4	Adopted
3. Amendment permitting Legislature to classify property for taxation, otherwise increasing power of legislature over taxation,	55,568	43,793	11,775	77.3	Adopted
4. Amendment permitting establishment of State or County Rural Credit Systems,	57,569	41,957	15,612	85.5	Adopted
5. Resolution for a convention to revise State Constitution,	56,432	35,377	21,055	71.5	Reject'd
6. Amendment to grant suffrage to women,	53,432	58,350	4,918	87.3	Reject'd
7. Amendment for State-wide prohibition,	65,334	53,380	11,954	92.4	Adopted
8. Amendment permitting leasing of school lands longer than the present 5-year limit,	41,379	61,798	20,419	80.5	Reject'd
9. Amendment permitting Legislature by a two-thirds vote to fix salaries of state officers. Now fixed by constitution,	39,169	61,223	22,054	78.2	Reject'd

Higest percent of vote cast on any question, ... 92.4

Lowest percent of vote cast on any question, ... 71.5

Average percent of vote cast on all questions, ... 81.2

WASHINGTON.

General Election, November 7, 1916.

Total Vote for Governor, 377,602.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute authorizing manufacture, sale and export of 4 per cent. beer. In lieu of present prohibition, ...	98,843	245,399	146,556	91.9	Reject'd
2. Statute permitting sale of liquor in hotels and restaurants; also for manufacture of beer and direct sale to home consumers,	48,354	263,390	215,036	85.1	Reject'd
By Referendum Petition:					
1. Law prohibiting circulation of initiative and referendum petitions and requiring that petitions be signed at office of registration officers only, ...	62,117	196,363	134,246	68.4	Reject'd
2. Law imposing above restrictions on recall petitions, ...	63,646	193,686	130,040	68.1	Reject'd
3. Law crippling direct primary and re-establishing county and state party convention system,	49,370	200,499	151,129	66.1	Reject'd
4. Law prohibiting and penalizing picketing in industrial strikes,	85,672	183,042	97,370	71.1	Reject'd
5. Law that no "new public utility" could be started except by a "certificate of public necessity and convenience" from the State Public Service Commission. Anti-municipal ownership, ...	46,820	201,742	154,922	65.8	Reject'd
6. Law seriously crippling the Seattle publicly owned port, a $7,000,000 institution, ...	45,264	195,253	149,989	63.6	Reject'd
7. Law for budget system. State and local. Violated home-rule principle for municipalities,.	67,205	181,833	124,628	65.9	Reject'd
By the Legislature:					
1. Amendment that taxpayers only be permitted to vote on bond issues, or fiscal questions, ...	88,963	180,179	91,216	71.0	Reject'd

Highest percent of vote cast on any question, ... 91.9

Lowest percent of vote cast on any question, ... 63.6

Average percent of vote cast on all questions, ... 71.5

SPECIAL ELECTION OF 1917.

MAINE.

Special Election, September 10, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 59,442.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment, elections—polling districts,	22,588	24,593	2,005	79	Reject'd
2. Amendment, legislature—apportionment,	22,013	21,719	294	73	Adopted
3. Amendment, militia—appointment of officers,	20,585	23,912	2,931	74	Reject'd
4. Amendment, removal of sheriff,	29,584	25,416	4,168	92	Adopted
5. Amendment, woman suffrage,	20,604	38,838	18,234	100	Reject'd

NEW MEXICO.

Sepecial Election, November, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 40,869.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: (The Constitution has no Initiative.)					
By Referendum Petition: NONE. (Requirements practically impossible of operation.)					
By the Legislature:					
1. Amendment, Judicial districts created,	16,822	22,036	5,214	95	Reject'd
2. Amendment, State Prohibition,	28,732	12,137	16,595	100	Adopted
3. Amendment, taxation, limitation of tax rate,	14,107	25,077	10,970	96	Reject'd

OHIO.

Special Election, November 6, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 1,046,317.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for state-wide prohibition, ...	522,590	423,727	1,137	100	Reject'd
By Referendum Petition:					
1. Statute granting presidential suffrage to women, ...	417,517	563,146	145,629	94	Reject'd
By the Legislature: NONE.					

OREGON.

Special Election, June 4, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 141,119.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment limiting number of bills introduced and increasing pay of the legislators, ...	22,276	103,238	80,962	89	Reject'd
2. Amendment declaring against implied repeal of provisions of the constitution by amendments thereto. (Ambiguous. Hostile to initiative and referendum), ...	37,187	72,445	35,258	77	Reject'd
3. Amendment for uniform taxation of property of the same class, ...	62,118	53,245	8,873	82	Adopted
4. Amendment requiring election of city and state officers at the same time, ...	83,630	42,296	41,334	89	Adopted
5. Statute authorizing state bond issue of $6,000,000 for roads,	77,316	63,803	13,513	100	Adopted
6. Statute authorizing ports to create indebtedness to buy ships, etc., ...	67,445	54,864	12,581	86	Adopted
7. Statute, tax levy of $400,000 for new penitentiary, ...	46,666	86,165	39,499	94	Reject'd

GENERAL ELECTIONS OF 1918.

I. STATUS.

Thirteen States made use of the Initiative and Referendum in this election.

Four States had the Initiative and Referendum, but did not use them. (Maine, Michigan, Mississippi and Nebraska.)

Two States had the Referendum only, but did not use it. (Maryland and New Mexico.)

II. NUMBER OF MEASURES SUBMITTED.

By Initiative Petitions,	36	
By Referendum Petitions,	5	
Total by Initiative and Referendum Petitions,		41
(An average of three to each state using.)		
By the Legislatures (16 states),		58
Grand total,		99

III. ADOPTION AND REJECTION OF MEASURES.

	Adopted.	Rejected.	Totals.
Proposed by Initiative Petition,	24	12	36
Proposed by Referendum Petition,	1	4	5
Submitted by State Legislatures,	35	23	58
Totals,	60	39	99

IV. THE VOTE CAST UPON MEASURES.

(As compared with vote for Candidates in same elections.)

Average percent of vote cast upon highest measures, all states,	80
Average percent of vovte cast upon lowest measures,	66
Average percent of vote cast upon all measures,	72

ARIZONA.

General Election, November 5, 1918.

Total Vote for Governor, 51,959.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for new Workmen's Compensation Act,	12,873	27,177	14,304	77	Reject'd
2. Amendment dividing counties into legislative districts for purpose of representation in lower House of State Legislature according to population instead of geographically, giving one representative to each district,	17,564	10,688	6,876	54	Adopted

		Yes.	No.	Majority.	% Vote.	Result.
3.	Amendment authorizing legislature to enact laws for sale or release of state lands (includes school lands), ...	16,372	10,867	5,565	54	Adopted
4.	Amendment limiting sale of agricultural lands to 160 acres and of grazing land to 640 acres, ...	14,379	11,179	3,200	50	Adopted
5.	Statute for capital punishment,	20,443	10,602	9,841	60	Adopted
6.	Statute prohibiting vaccination of minor children without consent of guardian, ...	16,941	16,411	3,530	59	Adopted
7.	Statute providing that all applications for lease of state lands should be on forms by Land Commissioner, and filed and sworn to, ...	10,239	10,975	736	41	Reject'd
	By Referendum Petition:					
1.	Act abolishing gambling places,	10,736	10,066	670	40	Adopted
2.	Act prohibiting use of buildings for houses of prostitution, ...	19,102	8,990	10,112	54	Adopted
	By the Legislature:					
1.	Act to re-establish contract system of doing state work and repeal act establishing state bank and state printing plant,	13,297	11,658	1,639	49	Adopted

ARKANSAS.

General Election, November 5, 1918.

Total Vote for Governor, 78,100.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Amendment raising city debt,..	25,059	24,191	868	63	Reject'd
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Amendment permitting Supreme Court to sit in divisions and increase number from 3 to 7,	20,721	28,888	8,167	64	Reject'd
2.	Amendment providing bond issue for farm credit fund in regulating rural credit loan,.	22,741	27,571	4,830	64	Reject'd

(Note: Requires majority "All votes cast.")

Special Election, December 14, 1918.

Order by the Constitutional Convention.

1. Proposed new Constitution, .. (Light vote. Compare with vote cast for governor above.)	23,820	37,184	13,364	..	Reject'd

CALIFORNIA.

General Election, November 5, 1918.

Total Vote for Governor, 688,670.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for single tax, ...	118,088	360,334	242,246	69	Reject'd
2. Statute regulating liquor traffic,	256,778	341,897	85,119	87	Reject'd
3. Statute against usury, limits interest rate to 7% per annum, and in no case to exceed 12%.	231,147	212,207	18,940	65	Adopted
4. Statute limiting yearly increase in county tax to 5% of total previous year. Applies also to school tax, ...	167,049	227,953	60,904	58	Reject'd
5. Statute amending dental act to permit any person to get license from State Board after five years practice and payment of $25, ...,	200,475	314,713	114,238	75	Reject'd
6. Statute prohibiting liquor traffic after Dec. 31, 1918, ...	275,643	306,488	30,845	85	Reject'd
By Referendum Petition:					
1. Act limiting county and school tax levies, ...	127,634	259,626	131,992	51	Reject'd
By the Legislature:					
1. Amendment permitting legislation to fix conditions on which public monies may be deposited in banks, etc., ...	239,203	180,856	58,347	61	Adopt'd
2. Amendment for absent voting. Legislature to select method, .	189,845	252,387	62,542	65	Reject'd
3. Amendment permitting consolidation of city and county government, ...	195,998	183,610	12,388	51	Adopted
4. Amendment making the creation and changing of state courts a legislative instead of a constitutional matter, ...	86,123	274,231	188,108	51	Reject'd
5. Amendment permitting Los Angeles County by vote to levy tax to replenish public funds insufficient for original purpose voted, ...	183,994	178,970	5,024	50	Adopted

		Yes.	No.	Majority.	% Vote.	Result.
6.	Amendment giving alumni of State University representation on governing board, and granting board freedom in detailed management of University, ...	249,886	148,305	101,581	51	Adopted
7.	Amendment creating two additional divisions of the District Courts of Appeal to sit in San Francisco and Los Angeles,..	188,243	169,803	18,840	52	Adopted
8.	Amendment providing that when a borough is once established in a consolidated city and county government, no boundary change may be made except by popular vote, ...	179,627	171,735	7,892	51	Adopted
9.	Amendment exempting cemetaries from taxation, ...	170,296	302,325	132,029	69	Reject'd
10.	Amendment for state to reimburse cities for revenue losses through military service exemptions, ...	115,727	262,421	146,694	55	Reject'd
11.	Amendment permitting state to proceed with work on a right of way before compensation had been fixed for private owner, ...	212,011	179,976	32,035	57	Adopted
12.	Amendment exempting Y. M. C. A. and Y. W. C. A. property from taxation, ...	166,486	290,573	124,087	66	Reject'd
13.	Amendment creating Statet Budget Board. Legislature has adopted budget system,..	96,820	261,311	164,491	52	Reject'd
14.	Amendment permitting City of Venice to vote $60,000 in excess of constitutional tax limit for emergency debts,.....	188,349	167,647	20,702	51	Adopted
15.	Amendment authorizing legislature to establish Health Insurance System, ...	133,858	358,324	224,446	71	Reject'd
16.	Amendment vesting the legislature with power to establish Workman's Compensation system, ...	229,974	224,517	5,457	66	Adopted
17.	Amendment permitting organization of corporations in which stockholder's liability is limited to amount of his investment, ...	178,355	196,948	18,593	55	Reject'd
18.	Amendment allowing eminent domain proceedings to acquire more land than is actually needed for the purpose, ...	138,131	228,324	90,193	54	Reject'd
	High.					
	Low.					
	Average.					

COLORADO.

General Election, November 5, 1918.

Total Vote for Governor, 220,339.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for classified Civil Service,	75,301	41,287	34,014	53	Adopted
2. Statute for relief of the adult blind,	131,469	9,440	122,029	64	Adopted
3. Statute for State-wide prohibition,	113,636	64,740	48,896	81	Adopted
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for publication of referred measures in two newspapers in each county,	98,715	12,237	86,478	50	Adopted
2. Amending limiting the introduction in legislature to the first 15 days of session,	67,693	19,901	47,792	40	Adopted

High, ... 81%

Low, ... 40%

Average, ... 58%

MAINE.

State Election, 1917.

(No State Election in 1918.)

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature: (All Amendments.)					
1. Elections—Polling districts,	22,588	24,593	2,005		Reject'd
2. Legislature—Apportionment,	22,013	21,719	294		Adopted
3. Militia—Appointment of officers,	20,585	23,912	2,931		Reject'd
4. Removal of Sheriff,	29,584	25,416	4,168		Adopted
5. Woman Suffrage,	20,604	38,838	18,234		Reject'd

MICHIGAN.

General Election, November 5, 1918.

Total Vote for Governor, 434,376.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment providing that all proposed amendments to the constitution be submitted on ballot instead of on separate ballots,	317,070	90,744	226,326	94	Adopted
2. Amendment for Woman Suffrage,	229,790	195,281	34,509	98	Adopted

NOTE: State Prohibition was adopted in a Special Election April, 1919.

Several amendments were submitted in 1917 by legislature (See Political Science Review for Aug. 1919.)

High, ... 98%

Low, ... 94%

Average, ... 96%

MARYLAND.

General Election, 1918.

Total Votes for Congressman, 160,074.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: (State has no Initiative)					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for absent voting by Soldiers and Sailors,	81,494	19,099	62,395	63	Adopted

MISSOURI, 1918.

Total Vote for U. S. Senator, 577,706.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment for establishing State Homestead Loan Fund,	102,452	290,207	187,755	67	Reject'd
2. Amendment for Single Tax, ..	80,725	373,220	292,445	78	Reject'd
3. Home Rule for cities,.....	95,197	280,839	185,642	65	Reject'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment fixing tax limitations for local purposes,.....	90,637	297,118	206,481	67	Reject'd
2. Amendment concerning the Public School Fund, ...	93,392	289,269	145,877	66	Reject'd
3. Amendment affecting rate of Road Tax, ...	94,142	287,488	193,346	66	Reject'd
4. Amendment for 10% Special Tax for Road Fund, ...	81,610	293,101	211,591	64	Reject'd
5. Amendment permitting cities over 2000 and under 30,000 to lay special tax of 5% to build public utilities, ...	88,246	286,886	198,640	64	Reject'd
6. Amendment for state-wide prohibition, ...	223,618	297,582	73,964	90	Reject'd

High, ... 90%

Low, ... 64%

Average, ... 70%

MISSISSIPPI.

General Election, November 5, 1918.

Total Vote Cast for Governor, 54,601.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment to lower age qualification of Governor, ...	4,193	24,872	20,680	53	Reject'd
2. Amendment — classification of property for taxation, ...	6,502	22,426	15,928	53	Reject'd
3. Amendment opposing increase of Supreme Court pending; returns not received.					

MONTANA.

General Election, November 5, 1918.

Total Vote for U. S. Senator, 112,402.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute authorizing and regulating the Practice of Chiropractic in Montana,	46,302	39,320	7,082	76	Adopted
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment(?) for Terminal Elevator Bonds,	54,215	29,630	27,585	75	Adopted
2. Exemption of Mortgages,	55,296	30,614	14,682	77	Adopted

High, ... 77%

Low, ... 75%

Average, ... 76%

NEBRASKA, 1918.

Total Vote for Governor, 222,175.

Total Ballots Cast, 225,717.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for Woman Suffrage,	123,292	51,600	71,692	78	Adopted
2. Resolution for Constitutional Convention,	121,830	44,491	77,339	74	Adopted

NEVADA.

General Election, November 5, 1918.

Total Vote for U. S. Senator, 25,563.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute for Prohibition,	13,248	9,060	4,188	87	Adopte
By Referendum Petition: NONE.					
By the Legislature: NONE.					

NEW MEXICO.

Total Vote, 64,256.

State Election in 1917.

(No State Election in 1918.)

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: (The Constitution has no Initiative.)					
By Referendum Petition: NONE.					
(Requirements practically impossible of operation.)					
By the Legislature:					
1. Judicial Districts created, ...	16,822	22,036	5,214	61	Reject'd
2. State Prohibition, ...	28,732	12,137	16,595	64	Adopted
3. Taxation—Limitation of Tax Rate, ...	14,107	25,077	10,970	61	Reject'd
High, ...				64%	
Low, ...				61%	
Average, ...				62%	

NORTH DAKOTA.

General Election, November 5, 1918.

Total Vote for Governor, 94,055.

By Initiative Petition:					
1. Amendment for a new Initiative & Referendum Substitute Amendment applying to Statutes, ...	47,447	32,598	14,849	85	Adopted
2. Amendment regulating use of emergency by legislature as applied to Initiative and Referendum, ...	46,121	32,507	13,614	84	Adopted
3. Amendment regulating submission of Constitutional Amendments by Legislature, and creating new form of constitutional initiative, ...	46,329	33,572	12,757	85	Adopted
4. Amendment empowering legislature to exempt personal property, buildings and improvements from taaxtion, ...	46,833	33,921	12,912	86	Adopted
5. Amendment empowering Legislature to create State Hail Insurance system, and levy tax for same	49,878	31,586	18,292	87	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
6. Amendment raising the debt limit of the State from $200,000, providing that guarantee bonds should not be issued on state owned utilities in excess of $10,000,000, ...	46,275	34,335	12,040	86	Adopted
7. Amendment allowing State, or any city or county, to engage in publicly owned enterprises,	46,830	34,575	14,256	87	Adopted
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment limiting voting power in stock-holders in co-operative corporations, ...	49,392	32,053	17,349	87	Adopted
2. Amendment empowering Legislature to levy tax upon land to create hail insurance fund, ..	52,475	30,257	21,218	88	Adopted
3. Amendment that no law shall be declared unconstitutional by Supreme Court unless four judges out of 5 so decide, ...	52,687	28,846	13,841	87	Adopted
High, ...				88%	
Low, ...				84%	
Average, ...				86%	

OHIO.

General Election, November 5, 1918.

Total Vote for Governor, 960,862.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment applying referendum to action of Legislature upon supposed amendment to the Constitution of the United States, ...	508,282	315,030	193,252	86	Adopted
2. Amendment—State-wide Prohibition, ...	463,654	437,895	25,759	94	Adopted
3. Amendment empowering Legislature to classify property for purposes of taxation, ...	336,616	304,399	32,217	67	Adopted
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment empowering Legislature to enact laws providing against double taxation as of real estate and a mortgage thereon, ...	479,420	371,176	108,244	89	Adopted
High, ...				94%	
Low, ...				67%	
Average, ...				84%	

OKLAHOMA.

General Election, November 5, 1918.

Total Vote at the Election, 194,435.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment for Woman Suffrage,	106,845	81,389	25,456	97	Adopted

OREGON.

General Election, November 5, 1918.

Total Vote for Governor, 152,991.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Statute abolishing newspaper advertisement of delinquent taxes, and substituting method by which tax collector shall notify real estate owners by mail,	66,652	41,594	25,058	71	Adopted
2. Statute requiring the amount paid for legal advertising to be stated on such advertising in newspapers,	50,073	41,816	8,257	60	Adopted
3. Statute initiated by State Tax Commission authorizing increase in state tax levy for 1919,	41,364	56,974	15,610	65	Reject'd
By Referendum Petition:					
1. Statute prohibiting seine and set-net in Rogue River and tributaries,	45,511	50,227	4,716	63	Reject'd
2. Statute closing the Willamette River to commercial fishing south of Oswego,	55,555	40,908	14,647	63	Adopted
By the Legislature:					
1. Amendment appropriating $125,000 for Southern Oregon Normal College at Ashland, and $125,000 for Eastern Normal,	49,935	66,070	16,135	76	Reject'd
2. Act appropriating $200,000 to establish home for dependent, delinquent and defective children near Portland,	43,441	65,299	11,858	71	Reject'd

High, ... 76%

Low, ... 60%

Average, ... 67%

SOUTH DAKOTA.

General Election, November 5, 1918.

Total Vots Cast for Governor, 94,867.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Statute — Richard's Election law,	47,981	34,705	13,276	96	Adopted
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Amendment for tax reform,	50,970	25,047	25,923	79	Adopted
2.	Amendment providing disqualifications for Supreme Court Judges,	41,646	24,798	16,848	69	Adopted
3.	Amendment—Sale of school lands,	45,809	21,855	23,954	71	Adopted
4.	Amendment—Increase of officers' salaries,	26,784	42,799	16,015	92	Reject'd
5.	Amendment—Womans suffrage,	49,318	28,934	20,384	81	Adopted
6.	Amendment—State coal mines,	40,632	25,922	14,710	68	Adopted
7.	Amendment—State to engage in internal improvements,	42,097	24,424	17,673	70	Adopted
8.	Amendment—State to develop resources,	34,821	27,886	6,935	64	Adopted
9.	Amendment—State to develop water power,	41,658	24,429	17,229	68	Adopted
10.	Sale of cement products,	38,108	25,702	12,406	66	Adopted
11.	Amendment—Hail insurance on crops,	41,162	25,896	15,266	70	Adopted
12.	Amendment—State owned elevators,	41,292	25,545	15,747	69	Adopted

High, ... 86%

Low, ... 64%

Average, ... 72%

UTAH, 1918.

Total Votes Cast, 137,820.

		Yes.	No.	Majority.	% Vote.	Result.
	No Initiative.					
	No Referendum.					
	By the Legislature:					
1.	State-wide prohibition, ...	42,691	15,780	26,911	44	Adopted
2.	Taxation—Mine assessments, .	35,337	21,436	13,901	42	Adopted
3.	Taxation—Exemption of homes, homesteads, and personal property, ...	38,699	12,880	25,819	40	Adopted

High, ... 44%

Low, ... 40%

Average, ... 42%

WASHINGTON.

General Election, 1918.

Total Ballots Cast, 215,684.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition: NONE.					
	By Referendum Petition:					
1.	Road bonds, ...	96,100	54,322	1,778	70	Adopted
	By the Legislature:					
1.	Resolution proposing Constitutional convention, ...	55,148	58,713	3,565	53	Reject'd
2.	Act appropriating $30,000,000 bonds for improvement of state roads, ...	96,100	54,322	1,778	70	Adopted

High, ... 70%

Low, ... 53%

Average, ... 64%

SPECIAL AND GENERAL ELECTIONS OF 1919.

I. STATUS.

Eleven "I. and R." states held no elections of any character.

Two states held elections for candidates. The I. and R. was used in one.

Five held special elections called by the legislature or governor. The I. and R. was used in two.

II. NUMBER OF MEASURES SUBMITTED.

By Initiative Petitions,	3	
By Referendum Petitions,	10	
Total by Initiativve and Referendum Petitions (4 states),		13
By the Legislatures (6 states),		19
Grand total,		32

III. ADOPTION AND REJECTION OF MEASURES.

	Adopted.	Rejected.	Totals.
Proposed by Initiative Petition,	0	3	3
Proposed by Referendum Petition,	8	2	10
Proposed by State Legislatures,	12	7	19
Totals,	20	12	32

IV. VOTE CAST UPON MEASURES.

(a) As compared with the vote cast for Candidates in the same election.

(Massachusetts and Michigan.)

Average percent of vote cast on highest measures,	92
Average percent of vote cast on lowest measures,	79
Average percent of vote cast on all measures,	85

(b) As compared with the total number of ballots cast in elections at which measures only were voted upon.

Average percent of vote cast on highest measures,	100
Average percent of vote cast on lowest measures,	90
Average percent of vote cast on all measures,	95

MAINE.

Special Eelection, November 8, 1919.

No Candidates Voted Upon.

Highest Total Vote on Any One Measure, 31,353.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment empowering governor to appoint all commissioned officers of the State militia and also adjutant general. (Previously the commissioned officers were elected by the militia and the adjutant general by the legislature in joint session,	15,826	11,020	4,806	71	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
2. Amendment permitting elector to vote in his original home precinct three months after removal to another precinct, ..	22,024	6,751	15,273	94	Adopted
3. Amendment authorizing legislature to issue bonds not to exceed $1,150,000 to maintain public wharves and establish adequate port facilities. Credit of state cannot be loaned, ...	22,637	6,777	15,860	93	Adopted
4. Amendment raising state debt limit from $300,000 to $800,000, ...	21,542	7,080	14,462	91	Adopted
5. Amendment increasing amount of state bonds which may be issued for state highways and bridges from $2,000,000 to $10,000,000, ...	26,228	5,125	21,163	100	Adopted

MASSACHUSETTS.

General Election, November 4, 1919.

Total Vote for Governor, 521,491.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition: NONE.					
By Referendum Petition:					
1. In January of 1919 the legislature passed an act (Chapter 116) prohibiting the payment of interest on savings bank deposits of trust companies oftener than semi-annually and from monies which had been on deposit for the preceding six months. This was promoted by conservative banking interests to head off the practice starting among progressive bankers to pay interest on money on deposit less than six months and pay it monthly if desired. On April 28th a referendum petition was filed against this act by the progressive banking interests. The legislature on July 18, 1919, reversed its former action, permitting payments of interest according to the by-laws of the individual bank, from one to six months, and the people at the election approved the latter act of the legislature by the following vote, ...	257,136	110,412	46,724	75	Adopted
By the Constitutional Convention:					
1. Rearrangement of the Constitution as prepared by the Constitutional convention, ...	263,359	64,987	198,372	63	Adopted

MICHIGAN.

Regular Election, April 7, 1919.

For Election of Members Supreme Court, Regents of State University, Superintendent of Public Instruction, State Board of Education, State Board of Agriculture.

Vote for Governor, 1916, 651,519.

Total Vote 1919 Election for Members of Supreme Court, 780,733.

Women Voted in 1919.

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Amendment relative to importation of buying and selling of beer and light wines, etc., ..	322,603	530,123	207,520	109	Defeat'd
By Referendum Petition: NONE.					
By the Legislature:					
1. Amendment authorizing state to issue bonds for highways, ...	558,572	225,239	333,333	100	Adopted
2. Amendment relative to increase or decrease of salaries of public officers, ...	313,539	418,778	105,239	94	Defeat'd

NORTH DAKOTA.

Special Election, June 26, 1919.

Referendum Measures Only Ordered by the Governor.

Total Ballots Cast, 111,814.

Vote for President, Election 1918, 108,677.

	Yes.	No.	Majority.	% Vote.	Result.
By Referendum Petition:					
1. Statute creating state printing commission, directing that one paper in each county shall be selected for official advertising purposes, ...	59,364	52,450	6,814	100	Adopted
2. Statute creating a Board of Administration to supervise all educational, charitable, and penal institutions of state, ..	59,749	51,894	8,855	99.8	Adopted
3. Statute creating one man tax commission, and granting ample power, ...	60,412	50,316	10,096	99	Adopted
4. Statute creating Commissioner of Immigration; main purpose to advertise resources and advantages of state, ...	59,421	52,156	7,265	99.8	Adopted

		Yes.	No.	Majority.	% Vote.	Result.
5.	Act creating Industrial Commission; centralized body to conduct and manage state utilities,	61,188	50,271	10,917	99.7	Adopted
6.	Act creating larger number of district judges; state divided in six districts,	60,343	49,925	10,418	98.7	Adopted
7.	Statutes creating state Bank of North Dakota,	61,495	48,239	13,256	98	Adopted

OHIO.

Special Election, November 4, 1919.

Highest Vote on Any Measure, 1,000,421.

Total Vote Governor, November 5, 1918, 960,862.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition:					
1.	Defining the phrase "Intoxicating Liquor,"	474,907	504,688	29,781	98	Defeat'd
2.	To repeal statewide prohibition,	454,933	496,786	41,853	95	Defeat'd
	By Referendum Petition:					
1.	Ratifying national prohibition,	499,971	500,450	479	100	Defeat'd
2.	To provide for state prohibition and its enforcement,	474,078	500,812	26,734	97	Defeat'd
	By the Legislature:					
1.	Classification of property,	439,897	517,245	77,348	95	Defeat'd

OKLAHOMA.

Special Election, May, 1919.

Ordered by the State Legislature.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition: NONE.					
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Bond issue of $50,000,000 to begin a system of hard-surface roads for the state. The kind of roads and details were indefinate,	69,917	171,327	101,410	100	Defeat'd

OREGON.

Special Election, June 4, 1919.

Total Vote Cast, 90,877.

		Yes.	No.	Majority.	% Vote.	Result.
	By Initiative Petition: NONE.					
	By Referendum Petition: NONE.					
	By the Legislature:					
1.	Amendment raising debt limitations counties from two to six per cent of assessed valuation,	49,728	33,561	16,167	92	Adopted
2.	Amendment permitting legislature locate an Industrial and Reconstruction Hospital outside seat of government, ...	38,204	40,707	2,503	87	Reject'd
3.	Amendment permitting issue of state bonds for payment of interest on irrigation, bonds, and providing for repayment,	43,010	35,948	7,062	87	Adopted
4.	Amendment for bonding of state for not more than $5,000,000 to promote reclamation in land settlement projects, ...	39,130	40,580	1,450	88	Reject'd
5.	Amendment for election of a Lieutenant Governor, ...	32,653	46,861	14,208	87	Reject'd
6.	Statute to appropriate $2,500,000 to be raised by sale of bonds for building proposed Roosevelt Coast Military Highway provided Federal Government appropriates same amount, ...	56,966	29,159	27,807	95	Adopted
7.	Statute to bond state for $5,000,000 to construct various hospitals, educational buildings, armories, penitentaries, and reclaim arid swamp and logged off lands for returned soldiers, ...	37,294	42,792	5,498	88	Reject'd
8.	Statute providing honorable discharge Soldiers, Sailors, Marines of state be provided not exceeding $200 per year expenses if attending any public or private educational institution in Oregon, ...	49,158	33,513	15,645	90	Adopted
9.	Statute to levy annual tax of one mill on all property of state of regulating distribution upon counties, ...	53,191	28,039	15,052	90	Adopted

ILLINOIS.

Special Election, November 4, 1919.

For Election of Delegates to a Constitutional Convention.

Total Vote Unattainable. Estimated at Around 500,000.

Illinois has no Initiative or Referendum. There is, however, a Public Opinion Law by which measures may be placed on the ballot to obtain an advisory vote of instructions to the Legislature.

The following questions were placed on the ballot at the above election:

	Yes.	No.	Majority.	% Vote.	Result.
By Initiative Petition:					
1. Shall the constitutional Convention submit a proposal for the state wide and local initiative and referendum, ...	257,640	209,348	48,292	100	Adopted
2. Shall the convention submit the constitutional initiative in case No. 1 fails, ...	242,519	205,306	37,213	96	Adopted
3. Shall the convention submit an amendment making possible public ownership of public utilities, state or local, ...	257,753	197,135	60.618	97	Adopted

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 34

EDUCATION—HIGHER—PROVISION FOR IN STATE.

Harrisburg, Pa., April 15, 1920.

Dr. Edgar Fahs Smith,
Chairman, Committee No. 5.

Dear Sir:

I understand you desire a brief on provisions for higher education in Pennsylvania.

I submitted a series of question to Dr. Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answed by Dr. Updegraff were as follows:

I. How do the provisions for higher education in Pennsylvania compare with those in other states?

II. What are the considerations that should determine whether a state already having a well-established system of private and semi-private higher education should undertake the full control and major support of one or more such institutions?

III. How does this support of the principal higher educational institutions in Pennsylvania compare with that in other states?

IV. What are the factors that cause the large differences in income per student between the different higher educational institutions?

V. What amounts of endowment and of appropriations would have been needed in 1916 to have put the University of Pennsylvania on the same financial footing as Harvard University—and what would be the amounts required at present?

VI. What is the standard number of inhabitants for each higher educational institution?

VII. What is the wording of sections of constitutions of other states relating to universities?

I submit herewith Dr. Updegraff's replies to these questions.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

REPLIES SUBMITTED BY DR. HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA.

QUESTION 1.

How do the provisions for higher education in Pennsylvania compare with those in other states?

Very early in life of each state of the United States a college or university was placed at the head of its educational system. Because of the strong influence of the church in the control of those institutions established during early times, the colleges and universities of the East passed into the control of private hands when the separation between church and state occurred. The same fundamental attitdue toward education that prompted the early colonists to establish colleges influenced the pioneers of the western states, but they established state colleges and universities to crown their public educational systems, not only because of the newly recognized principle of the separation of church and state, but also because of less homogeneity in society and of weakened influence upon the part of the church in the control of civil affairs. The fact that the Congress, at the time of the admission of each state, granted public lands(one or two townships) to a state university and began making grants to state agricultural and mechanical colleges in 1862, abetted by the further act that the settlers were poor and that the wealthier inhabitants of the East did not make endowments for church or private schools, also greatly promoted the founding and fostering of state higher educational institutions. So the typical situation as regards these institutions in the western states is one in which the state university (the agricultural and mechanical colleges sometimes an integral part of it and sometimes not) is the principal institution, while coexisting with it are a number of denominational colleges some excellent, other mediocre, while still others, because of lack of means, are so poor that they should be reduced to junior colleges or abolished altogether.

Through adequately supported and efficiently manned and equipped state universities, the western states assure themselves, not only of the proper educational advantages for their youth, but also of the assistance that experts in various fields of research can render the agricultural, industrial, commercial, political, educational and social activities of the commonwealth. The state universities through extension courses and other forms of service play a real and vital part in all phases of the lives of the people and the necessity for their active cooperation in all sorts of enterprises is felt not only in a vague theoretical way but also in a very real practical fashion. They are believed to be just as essential to social and personal welfare as the common schools.

Thus it has developed that in the east our chief higher educational institutions are privately supported and controlled, although they attempt to render, and to a large degree succeed in rendering, the same quality of public service as the western state universities. It is doubtful, however, whether the efforts in these directions are as numerous and as well sustained in the former group as in the latter. On the other hand, the former class of institutions has the advantage of the geographical extent to which its services go, for they serve every state in which opportunity offers, whereas the state institutions naturally are limited or limit themselves, somewhat at least, to the boundaries of the states in which they are located.

The system of higher education in Pennsylvania lies midway between these two. The commonwealth has her denominational colleges and in addition three large institutions that, while not state-controlled, have for many years been supported in part by public funds. They are the University of Pennsylvania, the University of Pittsburgh (formerly called Western University of Pennsylvania) and State College. In addition to these, two other colleges have in recent years received aid—Temple University and Duquesne College. The Governor is ex-officio the President of the Board of Trustees of

the University of Pennsylvania, although he has seldom served in that capacity. Approximately one-third of the trustees of State College are appointed by the Governor, but the property of each of these institutions is in the name of a private corporation and the State has no means of exercising positive control over them. The only way in which the public could control the policy of any of these schools is through the cumbersome negative expedient of withholding appropriations or refusing to grant them altogether. The only other states in which is found a situation at all comparable to that in Pennsylvania are New York, Vermont and possibly New Jersey.

QUESTION II.

What are the consideration that should determine whether a state already having a well-established system of private and semi-public higher education should undertake the full control and major support of one or more such institutions?

One of the most important of such considerations may be expressed in the question: Do all the youth of the commonwealth have open to them, as equally as may be, opportunities for higher education? Another question is: Is the education given in the private institutions of such a character as to meet the needs of the youth and of the business, professional, educational and social interests of the people? Still another consideration is found in the question: Do the holders of private wealth seem inclined to endow a sufficient number of institutions with amounts that are adequate to make them effective instruments in society for the individual and social welfare? Still again, it should be asked; Do those who control such institutions have a proper conception of the public interests and are they guided solely by public interests in determining the policies of these institutions? It cannot be stated too strongly that higher education must be free to all or relatively so; must be adapted to meet adequately and efficiently the individual needs of those who wish to learn and must be serviceable to the public in working out the individual and social problems that are of importance to the wel-

fare of the State. In case private control and private support are not fully meeting the needs, the State should in the interests of its agriculture, industry and business and of its political, educational and social life, step in and make of some of its private universities, institutions that will truly and adequately serve the State, through the provision of ample support and broad-minded, sane, and democratic management.

QUESTION III.

How does the support of the principal higher educational institutions in Pennsylvania compare with that of other states?

In Table 1 are given the incomes during 1915-16, the last normal year before the world war, of three groups of institutions (1) the four leading private universities, (2) the two leading semi-public universities, and (3) the higher public educational institutions combined of eight states, the number of institutions so combined being shown in parenthesis after the name of each state. When there is more than one institution, it is due to the fact that the agricultural or other departments are separated from the university or that some work is duplicated in another institution.

Table 1. Income of four leading private universities, of two semi-public universities, and of public higher educational institutions in certain states combined.

Institutions and States.	Services		From Public Sources.				From Private Sources.				
	Tuition and similar fees.	Board, rent and services.	Appropriations State and United States.	Income from endowments.	For increase of plant.	Gifts for current expenses.	Income for endowments.	Addition to plant.	Addition to endowments.	Other sources.	Total receipts.
Private Universities:											
Harvard,	$887,296	$162,451	.....	.....	.....	$282,758	$1,113,863	.....	$1,652,189	$189,057	$4,587,608
Yale,	563,054	198,097	.....	.....	.....	190,647	894,826	$27,760	2,318,547	26,089	4,218,355
Columbia,	1,851,961	122,297	.....	.....	.....	184,202	1,388,934	168,552	1,659,602	1,528,951	5,147,522
Princeton,	271,729	131,367	.....	.....	.....	106,360	197,467	.....	517,905	.....	1,224,770
Semi-Public Universities:											
Cornell,	690,243	208,465	$708,859	$34,429	$226,930	16,961	555,618	237,600	116,851	635,103	3,341,108
Pennsylvania,	726,813	214,361	427,892	.....	7,516	169,459	159,325	20,132	33,610	.....	1,730,392
States:											
California (1),	257,151	.....	1,671,349	84,202	364,151	96,086	157,040	470,040	96,486	304,705	3,499,988
Illinois (1),	246,923	.....	2,123,153	32,456	436,509	.....	.....	.....	.....	202,849	3,051,376
Iowa (2),	210,463	210,663	1,737,672	53,119	424,288	800	7,680	6,500	1,250	420,815	3,414,924
Michigan (3),	525,467	15,056	1,538,032	109,845	145,900	22,937	25,219	10,000	53,035	481,241	2,925,772
Minnesota (1),	290,884	.....	1,699,632*	55,039	155,306	.....	.....	.....	.....	264,396	2,603,489
New York (3),	657,328	268,465	854,976	34,429	269,938	16,961	596,972	237,600	121,626	727,599	3,844,983
Ohio (1),	233,856	21,984	1,278,211	50,844	225,252	3,355	.....	30,40...	.....	103,266	2,589,821
Pennsylvania (3),	1,088,980	214,361	1,271,891	.....	76,943	180,132	186,219	86,923	33,610	192,967	3,357,766
Wisconsin (1),	447,899	157,859	1,719,783	25,224	50,644	16,740	11,223	.....	.....	347,619	2,776,352

*The annual appropriation has recently been increased to $5,000,000.

It may be observed from this table that in the first group there is no public support of any kind, that in the third group, private support is small or entirely absent in all states except New York, Pennsylvania and California. In New York and Pennsylvania control is private, while California furnishes an example of a type of support and control which should in the interests of society be further developed and extended. The control of the University is in the hands of the Regents of the University of California and yet it has received in time gone by large endowments which are still being increased from year to year by substantial amounts. Money given to such boards by private persons will be used in the interests of all the people for the citizens of a strong healthy democracy will take care that such trusts are properly managed.

Table 2. Income per capita of students enrolled 1915-16.

Institutions and States.	Total Income.	Income Available for Current Expenses.
Private Universities:		
Harvard,	$871 17	$547 73
Yale,	1,291 18	573 08
Columbia,	884 83	650 55
Princeton,	674 76	437 64
Semi-Public Universities:		
Cornell,	575 45	475 32
Pennsylvania,	331 81	320 58
States:		
California,	536 90	409 19
Illinois,	521 71	447 05
Iowa,	513 98	440 08
Michigan,	352 84	327 74
Minnesota,	333 68	313 77
New York,	546 44	473 13
Ohio,	383 84	333 73
Wisconsin,	541 08	534 37
PENNSYLVANIA,	326 62	290 47
Pennsylvania,	331 81	320 58
Pittsburgh,	276 30	250 52
State,	368 49	342 33

In order that comparisons may be facilitated, Table 2 is furnished which contains the income given in Table 1 reduced to the amount per student for the year in question—first, the total income per student, and second, the income available for the payment of expenses by omitting columns 6, 9 and 10 in making the calculations. From this table it may be seen that in 1915-16 the State of Pennsylvania and also the particular institutions of Pennsylvania occupied a very low position. Pennsylvania was the only State in which the total income of its combined institutions fell below $300 per student. At the higher extreme was Wisconsin with an income of over $500 the actual difference in amounts being $244 or 84 per cent. of Pennsylvania's income. Four states had incomes ranging from $400 to $499, and three states from $300 to $399. There was a wide margin, however, between these two groups of states, the highest in the latter having an income of $333 and the lowest in the former an income of $409, a difference of $76. The low position of the State of Pennsylvania was partly caused by the small income of the University of Pennsylvania, which fell between the incomes of the States of Michigan and Minnesota, the seventh and eighth States respectively, but more particularly by the low income of the University of Pittsburgh, $250, $40 below the level of the State of Pennsylvania as a whole. Three hundred and forty-two dollars, the income of State College, was nearer the normal, falling as it did between the two groups of states, although quite near the lower one. The income of Wisconsin the highest state was 67 per cent. greater than that of the University of Pennsylvania, 57 per cent. greater than that of State College, and 114 per cent. greater than that of the University of Pittsburgh, while the income of California, the median state, was 28 per cent. greater than that of the University of Pennsylvania, 20 per cent. greater than that of State College, and 64 per cent. greater than that of the University of Pittsburgh.

When comparison of Pennsylvania's institutions is made with those of the large endowed private institutions located in the North Atlantic states, the financial limitations placed upon them are all the more striking, for all but one of them—Princeton—had a higher income than the highest state—Wisconsin. Taking the University of Pennsylvania as the institution of this state, most similar to these private institutions, Columbia had an income 103 per cent. greater than the University of Pennsylvania, while Yale's income exceeded hers by 80 per cent., Harvard by 74 per cent., and Princeton by 41 per cent.

QUESTION IV.

What are the factors that cause the large differences in income per student between different higher educational institutions.

A partial analysis of the incomes of the large private universities and of the combined state institutions by states is given in Table 3. The incomes from tuition and other educational fees were approximately $123 greater per student in the private than in the state institutions, $168 and $45 respectively, using the median figures. The income from fees for the State of Pennsylvania, $105, lies just midway between these two groups. The University of Pennsylvania's income from fees, $138, is very near the half-way point between the combined Pennsylvania figure and the median of the purely private universities. The University of Pittsburgh's income is $10 less, while State College obtained from fees were very low $30, which is $15 less than the median fee of all the states.

Table 3. Amounts received per student enrolled from various sources of income.

Institutions and States.	Number of Students.	From Tuition and other Educational Fees	Appropriations, State and United States.	Income from Endowments and Gifts for Current Expenses.
Private Universities:				
Harvard,	5,263	$168 47		$265 21
Yale,	3,267	172 32		274 69
Columbia,	7,833	237 33		201 66
Princeton,	1,615	168 23		188 04
Semi-Public Universities:				
Cornell,	5,806	103 37	$122 08	104 52
Pennsylvania,	5,275	137 78	81 09	66 64
States:				
California (1),	6,502	39 54	257 04	51 87
Illinois (1),	5,850	42 20	362 92	5 53
Iowa (2),	5,741	38 57	392 66	2 38
Michigan (3),	8,286	63 40	185 61	19 65
Minnesota (1),	7,802	37 27	213 80	7 04
New York (3),	6,801	96 64	125 70	99 26
Ohio (1),	5,695	45 88	250 87	12 40
Wisconsin (1),	5,131	87 27	335 15	5 43
PENNSYLVANIA (3),	10,282	105 92	123 71	35 65
Pennsylvania,	5,275	137 78	81 09	69 64
Pittsburgh,	2,579	128 73	95 30	18 03
State,	2,428	29 24	246 74	12 76

The appropriations per student for current expenses made by the national and state governments were lower in Pennsylvania than in any other state. The median state, Ohio, was over twice as large, while the highest state, Illinois, was granted appropriations three times as large. None of the private institutions had any income from this source.

In income from endowments and gifts for expenses, Pennsylvania had a better position as compared with the other states—$55—whereas the median was $12, but the amounts received from this source by state institutions was so small in proportion to the income from other sources that it did not help much to keep her out of the lowest position in total income. When her income from endowments and

gifts is compared with the income of the private universities from this source, the state of Pennsylvania's portion seems pitiably small. The situation was not much better for the University of Pennsylvania, the state's most favored institution in this particular. Her income from endowment and gifts available for expenses of $60 per student was more than quadrupled by both Yale and Harvard and more than tripled by both Columbia and Princeton:

The total endowments of these institutions as they were in 1917 are given in Table 4.

Table 4. Endowment funds of institutions and of states.

Private Universities:	
Harvard,	$33,742,854
Yale,	21,181,302
Columbia,	36,773,264
Princeton,	6,565,010
Semi-Public Universities:	
Cornell,	14,221,996
Pennsylvania,	8,482,489
States:	
California,	5,490,430
Illinois,	649,012
Iowa,	1,026,343
Michigan,	1,327,412
Minnesota,	1,785,570
New York,	----------
Ohio,	153,133
Wisconsin,	704,899
PENNSYLVANIA,	9,550,030
Pennsylvania,	8,482,489
Pittsburgh,	567,541
State,	500,000

This review of the facts seems to warrant the following conclusions:

1. That the income of State College on the per student basis held a median position although lower than the income of state institutions in the highest states. Its greatest deficiency in income is in fees received from students. On the whole, it must be said that higher education in agriculture and in engineering as represented at State College do not cause Pennsylvania's low position.

2. It follows, then, that it is the incomes of the two semi-public universities that cause the low position. The income from student fees in both these institutions is higher than in the state schools but lower than in private schools, due in part to the free scholarships granted students in return for state appropriations. They both lack much in endowment for the places they are fitted to occupy and the services they do render, and the public appropriations they receive are not nearly sufficient to make up the deficiencies.

3. It thus follows, in a word, that the low incomes are due either to small endowments or to small appropriations or to both, according to whether they are to be regarded as private, public, or semi-public institutions, respectively.

QUESTION V.

What amounts of endowment and of appropriations would have been needed in 1916 to have put the University of Pennsylvania on the same financial footing as Harvard University—and what would be the amounts required at present?

Assuming both institutions were wholly private and that full tuition was charged, an annual appropriation would have been required for Pennsylvania of $1,197,425 in addition to the annual appropriation of $427,892 actually received; or if the University of Pennsylvania were public and only nominal fees paid by students, an annual appropriation of $1,685,250 would have been necessary. Turning now to endowments, the amounts that would have been necessary to bring in these additional sums of money are approximately $23,000,000 and $34,000,000 respectively. To bring these figures down to the year 1920, $12,000,000, the amount of the additional endowment which Harvard has recently raised, or $15,000,000, which amount it seems she will be successful in raising, should be added. The additional annual appropriation by the state to offset such a private endowment would be $600,000 or $750,000.

In a word, for the University of Pennsylvania to get on the same financial footing as Harvard and remain a private institution, she

would have to increase her endowment by $49,000,000, and should she by so doing lose the annual state appropriation, she would have to increase her fees to Harvard's amount and look for annual gifts to make up the difference or else still further increase the endowment by $5,000,000 or $6,000,000, giving her a total endowment with the endowment of $8,000,000 which she already has of at least $60,000,000. Or if she should become a purely public institution, in order for her to have adequate support with the payment of only nominal fees from students, the total annual appropriation should be from $2,750,000 to $2,900,000. To support her on the same basis as the University of Illinois, $550,000 less would be required annually.

QUESTION VI.

What is the Standard number of inhabitants for each higher educational institution?

The estimated population of each of such states on July 1, 1915, as given by the Bureau of Census, divided by the number of institutions is as follows:

California,	2,848,275
Illinois,	6,069,519
Iowa,	1,110,519
Michigan,	1,007,721
Minnesota,	2,244,761
New York,	3,362,189
Ohio,	5,088,027
Wisconsin,	2,500,350
Pennsylvania,	2,794,664

Illinois has two large private universities, Chicago and Northwestern; New York likewise has several, Columbia, New York University, Syracuse, etc. Ohio has two other state institutions not included in the tables above because of lack of satisfactory data. Taking these facts into account, it would seem that the present standard number of inhabitants for each higher educational institution is from 2,000,000 to 3,000,000.

QUESTION VII.

What is the wording of sections of constitutions of other states relating to universities?

The provisions of two types of states are given.

University of Wisconsin.

Section 6, p. 41. State University. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund" the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

University of California.

Section 9, p. 86. The University of California shall constitute a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislation control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. Said corporation shall be in form a board composed of eight ex-officio members, to wit: the governor, the lieutenant governor, the speaker of the assembly, the superintendent of public instruction, the president of the state board of agriculture, the president of the Mechanics Institute of San Francisco, the president of the alumni association of the university and the acting president of the university, and sixteen appointive members appointed by the governor: provided, however, that the present appointive members shall hold office until the expiration of their present terms. The term of the appointive members shall be sixteen years; the terms of two appointive members

to expire as heretofore on March first of every even-numbered calendar year, and in case of any vacancy the term of office of the appointee to fill such vacancy, who shall be appointed by the governor, to be for the balance of the term as to which such vacancy exists. Said corporation shall be vested with the legal title and the management and disposition of the property of the university, and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct. Said corporation shall also have all the powers necessary and convenient for the effective administration of its trusts, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise; provided, that all moneys derived from the sale of public lands donated to this state by act of congress approved July 2, 1862 (and the several acts amendatory thereof) shall be invested as provided by said act of congress and the income from said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanic arts, in accordance with the requirements and conditions of said act of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the state shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 35

EDUCATION—STATE'S ABILITY TO GREATLY INCREASE APPROPRIATIONS.

Harrisburg, Pa., April 15, 1920.

Dr. Edgar Fahs Smith,

Chairman, Committee No. 5.

Dear Sir: I understand you desire a brief on the ability of the State to accord large additional support to education.

I submitted questions on this subject to Dr. Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answered by Dr. Updegraff were as follows:

I. How heavy a load of taxation does Pennsylvania carry in comparison with other states?

II. Is there sufficient private wealth in possession of the citizens of Pennsylvania to warrant higher taxation for educational purposes than now imposed?

I submit herewith Dr. Updegraff's replies to these questions:

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

REPLIES SUBMITTED BY DR. HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA.

QUESTION I.

How heavy a load of taxation does Pennsylvania carry in comparison with other states?

In 1918 there were but 9 states in the Union which expended less per capita through their state governments than Pennsylvania and all of them were located in the South. Many states expended twice as much and some almost three times as much as Pennsylvania. The per capita amount for Pennsylvania was $3.32, for the entire United States $4.58, for New England $6.92, east, north central states $4.56, west north central $4.82, New York $5.51, New Jersey $6.85. (Bureau of Census, Financial Statistics of Cities 1918, p 92.)

In the same year the expenses of city governments and school districts per capita in cities of Pennsylvania were below the average for their respective groups in 17 out of 18 cases. In one-half the cases the per capita cost was less than 75 per cent of the group standard; in one city it was less than 50 per cent of the group standard. Table 1 gives the information in more definite form.

Table 1. Total expenses per capita for government of city and school district in cities of Pennsylvania compared with standard rates for same groups in United States, 1918. (1)

Cities.	Population of Cities.				
	Over 500,000.	300-500,000.	100-300,000.	50-100,000.	30-50,000.
Group Average,	$24 06	$22 66	$16 41	$14 40	$14 93
Allentown,				11 14	
Altoona,				10 28	
Chester,					11 04
Easton,					12 09
Erie,				12 27	
Harrisburg,				12 16	
Johnstown,				10 89	
Lancaster,				8 72	
McKeesport,					12 16
New Castle,					11 11
Norristown,					5 97
Philadelphia,	21 60				
Pittsburgh,	25 38				
Reading,			9 36		
Scranton,		12 98			
Wilkes-Barre,				11 14	
Williamsport,					11 65
York,				7 79	

(1) Financial Statistics of Cities, Bureau of the Census, Washington, D. C., pp. 208-212.

The amounts per capita expended in 1916 for the various grades of education are shown in Table 2 for Pennsylvania and eight other states which are noted for the completness and quality of their educational system. From this table it may be observed that Pennsylvania is lower than any other state in the per capita amount expended for higher education and normal schools, fourth in appropriation for public schools, eighth in total state taxes and appropriations, sixth in local expenditures and eighth in the grand total.

Table 2. Distribution of state taxes and appropriations and of local expenditures for education per capita of total population 1915-1916.

(Report of Commissioner of Education, 1917, vol. 2.)

States.	Higher Education.	Normal Schools.	Public Schools.	Total State Taxes and Appropriations.	Local Expenditures.	Total.
California,	$0 65	$0 25	$2 23	$3 13	$9 44	$12 57
Illinois,	0 40	0 18	0 66	1 24	7 15	8 39
Iowa,	1 11		0 61	1 72	9 35	11 07
Michigan,	0 52	0 22	2 10	2 84	7 88	10 72
Minnesota,	0 75	0 17	0 77	1 69	9 17	10 85
New York,	0 21	0 09	0 58	0 88	6 70	7 58
Ohio,	0 42	0 05	0 61	1 08	7 89	8 97
Wisconsin,	0 67	0 58	1 04	2 29	6 67	8 96
PENNSYLVANIA,	0 15	0 64	0 88	1 07	7 24	8 31

From these facts it is evident that Pennsylvania is not taking nearly as much from individual wealth through the process of taxation, and expending it for school purposes as other states either for education or for all purposes. It follows that if the general practice elsewhere under similar conditions is a good guide, this state should expend more in order to deal justly with its individual citizens and to promote its general welfare.

QUESTION II.

Is there sufficient private wealth in the possession of the citizens of Pennsylvania to warrant higher taxation for educational purposes than now imposed?

Upon this point we have data from two sources. The bureau of the Census has compiled the wealth in all the states subject to the ad valorem or general property tax and made estimates of its true value. Twenty-one states have larger amounts per capita than Pennsylvania, including five of those included in Table 1. Wisconsin, Michigan and Ohio have less amounts. Table 2 gives the per capita estimated wealth of all states in 1912, the latest data available on this point.

Dr. Robert Murray Haig, Professor of Economics, Columbia University, and an expert on taxation of wide reputation spoke as follows regarding the wealth of the Commonwealth in a paper read at the University of Pennsylvania during Schoolmen's Week, April 8, 1920:

"Everyone knows that the wealth of Pennsylvania is great and diversified, but a few statements may serve to emphasize how entirely adequate is its economic foundation. Its mineral resources are enormous. It has over 18½ million acres of land in farms, and the value of the farm property per acre averages about $20 more than is generally the case in the United States (1). Pennsylvania does more than one tenth of the manufacturing of the country (2). This one state pays more than one-sixth of all of the federal income and profit taxes (3), and nearly one-seventh of the federal estate tax (4). If, with all this wealth and income localized within its borders, those responsible for Pennsylvania's taxes cannot evolve some method whereby the schools of this State are supported as well as in surrounding States, they merely convict themselves of fiscal incompetency."

(1) Abstract of the Census, P. 276:

Value of Farm Property in Pennsylvania,	$1,253,274,862 00
Farm land in Pennsylvania (Acres),	18,586,832
Value of Farm Property per acre in Penna.,	$67 43
Value of Farm Property per acre in U. S.,	$46 64

(2)

	U.S.	Pennsylvania
Number of establishments,	268,491	27,563
Average number of wage earners,	6,615,046	877,543
Value of products,	$20,672,051,870	$2,626,742,034

Value added by manufacture, .. $8,529,260,992 $1,044,182,046

(3) Statistics of Income, compiled from the returns of 1917 under the direction of the Commissioner of Internal Revenue, Washington, Government Printing Office, 1919 p. 21.

Grand Total (Personal, corporate, and partnership), ...$2,921,583,203

Grand Total (Personal, corporate, and partnership, Penna.), ... 478,235,234

Percentages, ... 16.37

(4) Report, Commissioner of Internal Revenue, 1919, pp. 96-97-Pennsylvania paid, for the fiscal year 1918, $11,270,215.63 out of a total of $82,029,983.13 or 13.7%."

Table 3. Per capita estimated wealth of all states having less amounts than Pennsylvania and also of certain other important States.

(Report of Commissioner of Education 1917, vol. 2, p. 59.)

States.	Per capita estimated wealth.
1. Nevada,	$5,038
2. Iowa,	3,539
3. North Dakota,	3,374
4. California,	3,284
5. Nebraska,	3,110
6. Montana,	2,834
7. Colorado,	2,785
8. Oregon,	2,661
9. Illinois,	2,660
10. Kansas,	2,652
11. New York,	2,626
12. Minnesota,	2,582
13. Washington,	2,511

14. Oklahoma,	2,475
15. Arizona,	2,255
16. South Dakota,	2,239
17. New Jersey,	2,140
18. Utah,	1,979
19. Connecticut,	1,969
20. Pennsylvania,	1,939
21. Indiana,	1,894
22. Wisconsin,	1,875
23. Michigan,	1,873
24. Ohio,	1,817
25. Massachusetts,	1,805
26. West Virginia,	1,800

It should be remembered in considering the table, however, that it deals with only one source of taxation, namely, general property including real estate and personal property and only that part of the latter which is found by the assessors. It does not furnish comparable data relative to possible bases for taxes on business or corporations, on inheritances or on incomes.

The reports of the Commission of Internal Revenue furnish an index of the relative incomes of citizens of Pennsylvania and of other states. There was only one state in the Union that had greater personal income per capita in 1918—New York. Pennsylvania's per capita was over twice as large as that of California, Michigan, Minnesota and New Jersey, almost four times as large as that of Wisconsin and New Jersey, almost four times as large as that of Wisconsin and nine times as large as that of Iowa. Table 3 furnished the amounts of income and profits taxes per capita of population paid during the year 1918 in 11 leading educational states.

Table 4. Receipts from income and profits taxes, total and per capita, in certain states, 1918.

(Report of Commissioner of Internal Revenue, 1919.)

States.	Receipts from income and profits tax, 1917-18.	Amount per capita.
California, ...	$76,615,000	$26 02
Illinois, ...	275,579,000	44 79
Iowa, ...	14,972,000	6 74
Michigan, ...	71,061,000	23 26
Minnesota, ...	58,218,000	25 54
New York, ...	685,449,000	66 76
Ohio, ...	241,027,000	46 80
Wisconsin, ...	39,192,000	15 67
Pennsylvania, ...	495,881,000	58 18
Massachusetts, ...	166,598,000	44 79
New Jersey, ...	71,811,000	24 35

While comparative data relative to the value of estates subject to a reasonable inheritance tax are not available, there is good reason for believing that the amounts in this state are larger per capita than in most states. It is also a well known fact, as pointed out by Mr. Robert K. Young, a former Treasurer of the Commonwealth, that there are many millions of dollars invested in manufacturing establishments that pay no corporation tax, though other kinds of corporations are taxed. The face value of capital stock of such corporations is estimated as amounting to over $1,000,000,000. An extract from Mr. Young's address to the State Teachers' Association in December, 1916, upon this subject is as follows:

> "As suggestive merely and without any expression on my part of the wisdom of such a course at this time, I will call your attention to manufacturing corporations in Pennsylvania. They are now untaxed except upon corporate loans. In other words, the capital stock of

> manufacturing corporations is untaxed. Have they not now reached a stage of development where they might reasonably be asked to assume some portion of this burden? By the report of the Department of Labor and Industry I find that the industries reported to that department of the state government for the year 1914 had capital invested aggregating $2,341,000,000. Do not be misled by this statement. This does not mean that this sum represents the capital stock of these corporations, because upon investigation it would no doubt be found that the capital invested is greatly in excess of the amount represented by the capital stock, not to mention the fact that many industries are conducted by private individuals. *(Schoolmen's Week Proceedings, 1918, p. 73.)*

Income taxes are now levied by 15 states. Our present inheritance taxes and corporation taxes can be extended without burdening unduly those upon whom they would be imposed and without causing interference with enterprises that are essential to the welfare of society. It seems to follow, therefore, that Pennsylvania can raise more money for education without causing any appreciable burden upon her people.

It would appear that state income should be derived from these sources in preference to increasing the property taxes. There is a considerable number of school districts in the State that cannot bear a further increase in the real estate taxes without causing an undue burden. On the other hand, there are many more districts of which this is not true. Under these circumstances state taxes should avoid the tax on real estate. *(In support of this statement see Brief No. 32, p. 295.)*

In reply to the query—How Pennsylvania should raise annually thirty-five million dollars for education in addition to the present appropriation, Dr. Murray Haig, in the address referred to above, said:

"A sum of such dimensions cannot be secured by petty trifling taxes of minor types. It is necessary to evolve a levy of broad application and high productivity. Some general tax on property or income is required. The answer which has been given of late years in other states where similar problems have arisen has been the development of a state income. Such taxes now exist in fifteen states, twelve of them having adopted the measure during the last decade after Wisconsin had shown the plan to be a practicable one. *(See H. L. Lutz, The Progress of State Income Tax since 1911, American Economic Review, March 1920, p. 66, et seq.)* A personal income tax could be fitted into the existing state system with almost no structural disturbance. Or the existing hodge-podge of special state taxes on various types of corporations could be consolidated into a business income tax with rates and exemptions arranged so as to increase the revenues very materially. Or both the personal and business income taxes might be introduced, which would bring about a condition analagous to that now existing in Wisconsin and in New York.

But how should a state tax have to be to meet the situation? The federal tax is heavy and highly progressive. Does it preempt the field? The answer is that it does not in other states. Again, the state constitution in its present form apparently makes it impossible to impose a state tax at progressive rates. Can the rates be so reasonable as to make graduation unnecessary? What are the figures?

The most simple proposal would be to raise 35 million dollars by an income tax on personal incomes only, leaving business to the tender mercies of the present special state taxes. The federal income

tax returns afford the best basis for computation. The latest figures published are for the year 1917. *(Statistics of Income, 1917, pp. 9 and 24.)* On the basis of the 1917 returns a personal income tax, with taxable personal income so defined as to include dividends, as is the case in New York law, with the same personal exemptions as the federal law, a state income tax in Pennsylvania would yield about nine million dollars for each one per cent. of the rate. A 4 per cent. personal tax would, consequently, yield about $36,000,000, or approximately the sum desired.

These figures assume that a state income tax assessment would be as efficient as the federal assessment. The Wisconsin assessment has the reputation of being more efficient. Moreover, the administrative expense is not great. It costs Wisconsin about $35,000 annually. On the same basis it would cost Pennsylvania about $175,000 annually.

If the state income tax rate were not more than four or five per cent. the question of graduation would not be of primary importance. This year the federal normal rate on individuals was reduced from 12 and 6% to 8 and 4%. The imposition of a 4% flat rate by Pennsylvania would be equivalent to re-establishing substantially the progressive scale which previously existed last year under the Federal law alone.

If, instead of merely adding a personal income tax, leaving present state business taxes as they are, it were considered desirable to tax business as well as individuals by the State income tax method, a rough calculation yields the following result. For each one per cent. of tax the yield would be about twenty millions, if one excluded dividends from the personal returns, and about 24½ millions for each one per cent. if individuals were taxed on their dividends. In other words, a tax of perhaps three per cent. on this basis would make it possible to sweep away the present State taxes on business and would provide the moneys needed for schools in addition.

If a four per cent. personal income tax seems large the possibilities of a progressive inheritance tax should receive consideration. For this a change in the constitution would be necessary. Figures supplied by the Comptroller-General show that estates to the estimated value of 286 millions were subjected to tax in the State in 1919. On this sum the State collected $7,841,191.05, or 2.7 per cent. Some states now have inheritance taxes graduated to as much as 15 per cent.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 37

EDUCATION.
DISTRIBUTION OF STATE APPROPRIATION.

Harrisburg, Pa., April 20, 1920.

Dr. Edgar Fahs Smith,

Chairman Committee No. 5.

Dear Sir:

I understand you desire a memorandum on the distribution of state appropriations for school purposes, from 1873 to 1919. I submit herewith a table prepared by the Department of Public Education giving full information on the subject.

Yours very truly,

WM. DRAPER LEWIS,
Secretary.

DISTRIBUTION OF STATE APPROPRIATION

Year	Total Appr.	Sal. Co. Supt.	Sal. Asst. Co. Supt.	Ex. Co. & Asst. S.	High Schools	Aid to N. S.	Main N. S.	Pur. N. S.
1919. -----	$24,000,000	$315,980	$298,800	$66,000 † $4,000	$750,600	$850,000	$460,000	$100,000
1917, -----	18,000,000	250,000	220,000	--------	750,000	700,000	460,000	25,000
1915, -----	16,000,000	240,000	201,600	--------	450,000	600,000	--------	100,000
1913, -----	16,000,000	240,000	--------	--------	450,000	600,000	--------	--------
1911, -----	15,000,000	230,000	--------	--------	450,000	600,000	--------	--------
1909, -----	15,000,000	230,000	--------	--------	450,000	600,000	--------	--------
1907, -----	15,000,000	230,000	--------	--------	450,000	475,000	--------	--------
1905, -----	11,330,000	230,000	--------	--------	200,000	475,000	--------	--------
1903, -----	11,220,000	220,000	--------	--------	100,000	475,000	--------	--------
1901, -----	11,211,000	211,000	--------	--------	50,000	400,000	--------	--------
1899, -----	10,465,000	205,000	--------	--------	--------	260,000	--------	--------
1897, -----	11,458,000	198,000	--------	--------	--------	260,000	--------	--------
1895, -----	11,458,000	198,000	--------	--------	--------	260,000	--------	--------
1894, -----	5,693,000	95,000	--------	--------	--------	98,000	--------	--------
1893, -----	5,693,000	95,000	--------	--------	--------	98,000	--------	--------
1892, -----	5,181,000	86,000	--------	--------	--------	95,000	--------	--------
1891, -----	5,181,000	86,000	--------	--------	--------	95,000	--------	--------
1890, -----	2,151,000	86,000	--------	--------	--------	65,000	--------	--------
1889, -----	2,151,000	86,000	--------	--------	--------	65,000	--------	--------
1888, -----	1,651,000	86,000	--------	--------	--------	65,000	--------	--------
1887, -----	1,651,000	86,000	--------	--------	--------	65,000	--------	--------
1886, -----	1,134,000	86,000	--------	--------	--------	48,000	--------	--------
1885, -----	1,134,000	86,000	--------	--------	--------	48,000	--------	--------
1884, -----	1,126,000	86,000	--------	--------	--------	40,000	--------	--------
1883, -----	1,126,000	86,000	--------	--------	--------	40,000	--------	--------
1882, -----	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1881, -----	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1880, -----	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1879, -----	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1878, -----	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1877, -----	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1876, -----	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1875, -----	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1874, -----	1,000,000	67,000*	--------	--------	--------	20,000	--------	--------
1873, -----	760,000	67,000*	--------	--------	--------	20,000	--------	--------

*Estimated.

†Used to pay High Schools the maximum.

FOR SCHOOL PURPOSES, 1873-1919

Liq. Ind. N. S.	Eng. Pro. N. S.	Voc. Ed.	Agr. Ed.	Con. of Schools	Non.-Res Tuition	Phil. N. S.	Min. Salary	Common Schools
$225,000	$139,000	$351,000	$300,000	$350,000 8,000 Blind Ch.	----------	----------	$10,500,000 00	$9,201,220
325,000	139,000	300,000	200,000	----------	----------	----------	4,448,305 25	10,174,694
----------	State B. $1,000,000	227,800	97,000	----------	$100,000	----------	2,252,537 35	10,731,062
----------	----------	88,000	52,000	----------	100,000	$72,000	2,163,203 82	12,231,796
----------	----------	----------	----------	----------	100,000	72,000	2,058,868 05	11,489,131
----------	----------	----------	----------	----------	105,000	72,000	1,961,903 69	11,586,096
----------	----------	----------	----------	----------	----------	----------	----------	13,845,000
----------	----------	----------	----------	----------	----------	----------	----------	10,425,000
----------	----------	----------	----------	----------	----------	----------	----------	10,425,000
----------	----------	----------	----------	----------	----------	----------	----------	10,550,000
----------	----------	----------	----------	----------	----------	----------	----------	10,900,000
----------	----------	----------	----------	----------	----------	----------	----------	11,000,000
----------	----------	----------	----------	----------	----------	----------	----------	11,000,000
----------	----------	----------	----------	----------	----------	----------	----------	5,500,000
----------	----------	----------	----------	----------	----------	----------	----------	5,500,000
----------	----------	----------	----------	----------	----------	----------	----------	5,000,000
----------	----------	----------	----------	----------	----------	----------	----------	5,000,000
----------	----------	----------	----------	----------	----------	----------	----------	2,000,000
----------	----------	----------	----------	----------	----------	----------	----------	2,000,000
----------	----------	----------	----------	----------	----------	----------	----------	1,500,000
----------	----------	----------	----------	----------	----------	----------	----------	1,500,000
----------	----------	----------	----------	----------	----------	----------	----------	1,000,000
----------	----------	----------	----------	----------	----------	----------	----------	1,000,000
----------	----------	----------	----------	----------	----------	----------	----------	1,000,000
----------	----------	----------	----------	----------	----------	----------	----------	1,000,000
----------	----------	----------	----------	----------	----------	----------	----------	901,000
----------	----------	----------	----------	----------	----------	----------	----------	901,000
----------	----------	----------	----------	----------	----------	----------	----------	901,000
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----------	----------	----------	----------	----------	----------	----------	----------	901,000
----------	----------	----------	----------	----------	----------	----------	----------	905,000
----------	----------	----------	----------	----------	----------	----------	----------	907,000
----------	----------	----------	----------	----------	----------	----------	----------	905,000
----------	----------	----------	----------	----------	----------	----------	----------	913,000
----------	----------	----------	----------	----------	----------	----------	----------	623,000

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 38

HOUSING PROBLEM—CONSTITUTIONAL CHANGES NECESSARY TO SOLVE.

Harrisburg, Pa., April 30, 1920.

Mr. Charles H. English, Esq.,

Chairman Special Committee on Municipalities.

Dear Sir:—I understand you desire a memorandum on the constitutional changes necessary to solve the housing problem. I submitted this question to Mr. John Ihlder, Executive Secretary of the Philadelphia Housing Association, and append hereto his letter.

Yours very truly,

WM. DRAPER LEWIS,

Secretary.

Mr. William Draper Lewis,

Commission on Constitutional Amendment and Revision.

Harrisburg, Pa.

Dear Sir:—I have received your questions and I submit herewith data which will give you the information desired:

What constitutional changes, if any, are necessary to enable the state and municipal governments to meet in an adequate way the housing problem?

I. What is the housing problem?

II. Illustrations of the ways in which districts should be improved.

III. Definite constitutional provisions.

The housing problem is the problem of securing proper dwellings for all the people.

There are two well defined governmental methods of attacking this problem. These methods are supplementary and neither by itself gives hope of success.

The first method is by governmental regulation of the work of private builders and developers.

The second method is by governmental assistance in building and development. This takes various forms.

Both methods have been used for many years by the nations of western Europe, by Canada and several South American nations and by the Australasian commonwealths. In the United States, until recently, the chief reliance has been upon the first method. Now, however, the second method is coming more openly into use; as in Massachusetts, California and Wisconsin. Before the war and since, bills have been introduced in Congress at several sessions authorizing the issue of bonds, the proceeds of which were to be used to erect dwellings in the District of Columbia. During the war the Federal government, like that of England, erected thousands of dwellings in order to make possible the production of ships and munitions.

Governmental Regulation.

This takes two forms: housing regulation which deals with individual buildings, and zoning and city planning which deals with the development of areas or of whole communities. For such governmental regulation there is now constitutional sanction, except that it might be wise to give zoning and city planning special mention in the new constitution.

Governmental Assistance.

Forced by the logic of facts our American state and municipal governments long have given assistance in building and development, though, as stated above, it is only recently that some of them have

definitely stated that this is for the purpose of securing better dwellings. They extend sewers and water mains in order to stimulate the erection of dwellings. (This is a matter of first importance in Philadelphia today.) They build and manage transit facilities in order to relieve an intolerable congestion of population due largely to improper and unregulated urban development in the past.

In order that such assistance may be most effective, or that it may be given in adequate measure to those districts which it serves, experience has shown the wisdom of constitutional provisions permitting excess condemnation and assessment of benefits. Such provisions are included in the printed draft of the revied constitution.

Experience has shown, however, that it is necessary for the state and its municipalities to go farther than this if they wish to correct the worst abuses of the past or to prevent the development of similar abuses in the future. Today we seek to accomplish these results by round about and inefficient methods, as by clearing out a slum spot and using its site for a park or playground, or by securing, in an as yet undeveloped area, a creek valley or marsh for park land in order to prevent the creation of a slum. Such round about methods have the disadvantage which usually attends efforts to kill two birds when one has only one stone. In the attempt to kill both, both are often very imperfectly killed. In order to get rid of an especially bad group of houses the playground is not placed in the best spot and by being forced to concentrate on a group of houses that cover a site small enough to warrant condemnation for a playground other houses almost as bad, are left, to the detriment of the neighborhood for which the playground is created. Meanwhile, those who secured the playground, congratulate themselves on having put a patch on the old garment and turn their attention elsewhere.

Municipalities Now Own Land Occupied by Dwellings.

There is another phase of the matter as it stand today that calls for attention. The public authorities often secure land for playgrounds, parks, bridge approaches or other "public" purposes years before they can use them for these purposes. Meanwhile the old dwellings remain and continue to be occupied. There being no municipal department definitely charged with responsibility for the proper maintenance of such property, it is often not properly maintained. For example, there are today in Philadelphia on city owned land, some of the worst houses in the city. This land was bought for a playground several years ago. There is no immediate prospect of its being used for that purpose. Meanwhile the dwellings stand and are occupied. With out present housing shortage it would be little short of a crime to vacate them. If they were vacated they would probably become nuisances, harbors for vagrants, places for clandestine vice, receptacles for filth. But it is also little less than a crime that they should be neglected as they now are, until some of them at least have become unfit for human habitation. That is, the municipality now owns lands occupied by dwellings. It has done so for many years, now one piece, now another. It will continue to do so in the future. But because of lack of constitutional sanction for such ownership, it must pretend to ignore the fact, it is unable to place responsibility for the proper maintenance of such property.

Authorization to Take, Hold and Sell Land, Etc.

In view of the above facts it is suggested that the state and the municipalities be given authority under some such provision as the following:

> "When it is in the public interest the commonwealth or a municipality may take, improve and lease or sell land and the improvements thereon, subject to such limitations as the general assembly may prescribe."

Use in Congested Areas.

Such authorization would and should be usesd for other than the single purpose above described. There are today in our cities considerable areas which have been spoiled by improper development. The speculator or the ignorant builder has "sweated" them to the limit, the public authorities have failed to provide proper public ways. Here are rear dwellings, back-to-back dwellings, dwellings front on courts or very narrow streets and on dead-end streets.

It is quite impossible now for private enterprise to rectify this condition. At private sale one can not buy up all the properties necessary to a satisfactory replatting, some one or more owners, getting wind of what is proposed and learning that his property is essential to the scheme, holds out for an unwarranted price that would wreck the plan. Moreover, in many such plans, it is necessary to devote to public purposes, as streets, a considerable part of the area now occupied by private buildings. The sacrifice of this land, for which private developers would get no commensurate return, again stops private enterprise.

The excess condemnation provision in the revised draft of the constitution offers no assurance of being adequate to meet such situations. The courts might well hold that it authorizes securing only property abutting upon a proposed street, park, etc., whereas here it may be necessary in order to secure satisfactory results, to acquire all the property in a square or in several squares, in one or more of which there may be involved no such "public" improvement as street widening or extension. There are squares where the crying need is the demolition of unfit, insanitary rear and back-to-back dwellings.

At present we can only vacate such dwellings, and we can do this only when they fail to provide such essentials as water or sanitary conveniences. If such provision is made, they remain, a detriment to the community. If it is not made and they are vacated, they become virtually a public nuisance. Their existence entails constant inspec-

tion and re-inspection by public officials; a constant series of orders to clean, to improve, to vacate; constant summonses to court and trials, all a continual drain upon the public treasury additional to the drain caused by their effect upon their inhabitants. Such dwellings should be removed and the only agency adequate to the task is the state or a municipality. Moreover the state or a municipality would benefit by their removal far more than could any private individual or corporation, for the improvement effected would not only raise standards throughout the area, but would reduce such burdens as the maintenance of health, hospital and police service.

Use in Undeveloped Areas.

Such constitutional sanction as suggested might be made use of in undeveloped areas as well as in those where land is now overcrowded. At the present time our only means of preventing the improper development of a new area and the creation there of a future slum, is by regulation, which at most can prevent only the worst abuses, and by taking over for parks, land unfit for building purposes. The amount of park land which a municipality can support is necessarily limited. Moreover park land should be selected because it is fitted for park purposes not only because of its character but also because of its accessibility to the homes of the people. To take land for park purposes in order to prevent its misuse is not efficient.

Moreover there is much land at present unfit for building which can be made fit if improved on a large enough scale. In the past we have permitted such land to be developed piece-meal by private initiative with the result that the municipality has been and through the future will be put to constant expense in dealing with evils that could and should have been prevented. Buildings have been erected upon marshy sites that could have been drained, over streams that constantly break through and flood cellars. To make the necessary improvements before development involves outlays at which the municipality hesitates when its only means of recouping itself lies in

slightly increased tax returns. If, however, the municipality could purchase the land in its natural state, make the needed improvements and then sell at the value its own work had created, not only would it be financially able to undertake such improvements, not only would its people have a more wholesome environment, but it would be saved the everlasting expense of seeking to correct time after time ills that can not be permanently cured after the area has been built up.

Suggestions for Constitutional Provisions.

In addition to the suggestion given above, to follow section 19, revised draft, i. e.,

> "When it is the public interest the Commonwealth or a Municipality may take, improve and lease or sell land and the improvements thereon, subject to such limitations as the general assembly may prescribe."

The following suggestions are offered: (Suggested new words are printed in Italics.)

> Section 4. "No debt shall be created by or on behalf of the state except to supply casual deficiencies of revenue not exceeding one million dollars, repel invasion, suppress insurrection, defend the state in war, pay existing debts, or, with the approval of two-thirds of all the members elected to each House, improve and rebuild the highways of the commonwealth and acquire land within the commonwealth for forest *and homestead* purposes: provided, however, that no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, *or for homestead purposes in excess of twenty-five million dollars*, and such indebtedness shall only be created with the consent of the electors of the State voting thereon at a public election in the manner provided by law."

Section 21. "The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual; but a lease by a municipality of a public service facility *or of land* owned by it shall not be construed to violate the provisions of this section, although the principal consideration for the lease is the covenant of the lessee to use the facility *or the land* under regulations protective of the public interest, or because the provision for a pecuniary return of the lessor is made contingent upon the earnings of the lessee's entire system *or holdings.*

In support of these suggestions there is herewith submitted the following:

1. Provision in the Massachusetts constitution, approved at the general election in November, 1914.

> "The general court shall have the power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the same for the purpose of relieving congestion of population and providing homes for citizens; provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof."

2. The Wisconsin law authorizing state and municipal loans to co-partnership housing companies. The dividends on the stock of these companies is limited.

3. The California law creating a state land settlement board and authorizing it to purchase, develop, lease and sell land. (On file in office of the Commission).

4. The example of the English government in making loans to public utility societies (corporations whose dividends are limited to six per cent.) up to three-quarters of the cost of land and buildings, and in granting subsidies equal to two-fifths of

the annual charges for interest and repayment of loan. (Copy of pamphlet "Housing by Public Utility Societies" issued by the Local Government Board, April, 1919, on file in office of the Commission).

5. Report of the Bureau of Labor Statistics, U. S. Department of Labor, Oct. 15, 1914, on "Government Aid to Home Owning and Housing of Working People in Foreign Countries." This is a compilation of data on government aid and while not up-to-date shows how nearly universal is the practice outside the United States. (On file in office of the Commission).

Respectfully sumbitted

JOHN IHLDER,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 39

COURTS—JUSTICE AND THE POOR.

ARGUMENTS OF REGINALD HEBER SMITH
AND
JAMES COLLINS JONES AT PUBLIC HEARINGS.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman,

Dear Sir: The Commission by resolution adopted Wednesday, April 21, 1920, directed me to submit the argument of Mr. Reginald Heber Smith of Boston, Massachusetts, on the administration of justice to the poor, and the argument of Mr. James Collins Jones of Philadelphia in favor of the amendments to Article V, submitted by him and by Mr. Owen J. Roberts of Philadelphia.

Mr. Smith's argument relates to and supports the new section proposed by Messrs. James Collins Jones, and Owen Roberts of Philadelphia (See Calendar of May 11, 1920, page 36, section 3-C).

The amendments supported by Mr. Jones will be found on the Calendar of May 11, 1920, pp. 33, 34, 36, 38, 40, 41, 45, 47, 48, 50, 51, 53, 54.

I submit herewith the transcription of the reporters' notes of the arguments referred to.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

ORAL STATEMENT

OF

MR. REGINALD HEBER SMITH,

BOSTON, MASSACHUSETTS,

MADE BEFORE THE COMMISSION, APRIL 14, 1920.

RELATING TO PROPOSED AMENDMENT, ARTICLE V, SECTION 3-C, CALENDAR MAY 11, 1920, PAGE 36.

Mr. REGINALD HEBER SMITH. Mr. Chairman and members of the Commission: It is almost as difficult to get from Boston to Philadelphia nowadays as it was before the railroads were built. The only train that could get me here on time landed me in your station at four o'clock this morning, and if I am a little bit slow this afternoon I hope you will be patiently and charitably inclined towards me. If I can help you see the great opportunity we have for improvement in our methods of administration of justice, I shall feel amply rewarded. I shall talk to you quite briefly and very simply upon the administration of justice in this country as it affects the poorer citizens and the immigrant in this country, and we can narrow the field by a few very simple definitions. In the first place, the trouble with the administration of justice in this country at the present time is not due to the judges. I think the general statement is warranted that the work of the American judges constitutes perhaps the most faithful and upright class of service that we have in the country. Secondly, that although I believe that our present method of administration of justice has caused a denial of justice in many cases to the poorer persons, yet that system causing a denial of justice, I would like to have it thoroughly understood, has not been brought about as the result of evil planning or the machinations of any body or group. In other words, no dominating class in this country has set out to wreck the machinery of justice which would make justice impossible to the poorer classes. No class has control over that. Third, the trouble is not with that body of the law which lawyers call the substantive law, as distinguished from the law of procedure, which we call the adjective law, or the machinery of justice. The substantive law is the law which creates and defines

the rights and the liabilities of persons in justice with each other and in justice with the state. Now, the great body of the American substantive law is democratic to the core. It is no respecter of persons, and that, gentlemen, in itself is a tremendous achievement. Our substantive law, so-called, is extremely fair and extremely democratic on the whole, and yet I want to make the point clear because it narrows that down to the field that needs more attention than anything else in the administration of justice. If you run your mind back just a moment in history you will realize what the substantive law in this country really is. In the first code really drawn up it was provided that if a man assaulted the daughter of a rich man he would get killed, and if he assaulted the daughter of a poor man he could be fined but a few pennies. In Rome in ancient times when a man came before the law or judge he was asked, "what class do you belong to?" If you were a rich man you might go with light punishment, but if you were a poor man, a day laborer, then you might be crucified for the same offense. Instances of that kind, things of that sort, are absolutely lacking in our laws today. The body of the law on the whole is a remarkably human achievement; but we know that in a large civilized community the law is not really law in the sense that it is a productive force only when it can be enforced through a court of law. There is a difference between what Dean Pond of the Harvard Law School, called the law in books and the law in action; in other words, law in books is merely paper and printers' ink, and it leaks from the books and has life and can protect us and redress us, if we have wrong, only if we have administration of justice, and if we have fairness in court. The substantive law, if it is to be a reality to all citizens, and the administration of justice, which enforces those laws must be acceptable to all citizens and workable by all citizens. Now, what is the situation in the administration of justice in this country? I would like to have you look at that through the eyes of an Italian client who came to me some three years ago. This is a story I like to tell and I can vouch for it because it came within my personal experience. This is on

Massachusetts. The Italian came to me and said that three weeks before he came to see me, while leaving his factory one day he had been met by an agent of a phonograph company who induced him to take a phonograph on approval. The agent said to this Italian, "All you need to do to get this phonograph on approval is to sign your name and address to this blank piece of paper, so that we will know where to send the phonograph." The paper was folded in this manner (demonstrating). The Italian wanted to return the phonograph and the agent said to him, "You cannot return it, it was sold to you on a contract." He said, "Come down to the office and we will talk it over." The Italian went to the office and the agent then unfolded the sheet of paper, and on the upper part of the paper had been printed a legal assignment of his wages, so the whole thing constituted a legal assignment of his wages, admittedly, by the man in his own hand writing. That had been served on the man's employer who, under the Massachusetts law, had to hold up the Italian's pay. That had gone on for three weeks. At the end of the three weeks the Italian had no money in the house, he had no food in the house and his credit was exhausted. He came to me to see what the law of Massachusetts could do for him. Now, the substantive law of Massachusetts affords him plenty of remedies, just as the substance of law of your state affords plenty of remedies, but if I took his case into the lower courts of Massachusetts, appeals could be had so that the case would have to be tried twice, and when you want relief to come, you cannot stand delays. Or, I could have taken the man into our Massachusetts equity courts, where we would have had a speedy trial and we would have an honest judge take that assignment of wages and tear it up. Before I could get that man into a Massachusetts equity court he would have to pay three dollars entrance fee, five dollars sheriff's fee for serving process, and so on, let us say, fifteen dollars attorney's fee to draw and present the bill of complaint. Now, in that simple little story we have the difficulties with the administration of justice in this country as it affects the poor people and immigrants. There are three difficulties; first, de-

lays; second, court fees; third, the expense of hiring lawyers. I am going to pass over the delay without saying much about it because the situation with regard to delay in our courts is infinitely better than it used to be, but it can yet be made better, and I think that the public conscience and public opinion will have their effect in eliminating delays, so far as they may. Secondly, the system of court costs and fees, that is, the tariff which the state levies for the privilege of using its courts, we have a curious situation as to that. There were no costs in the early English courts, and before the time that the system of costs grew up in England, parliament also passed a law, as far back as Henry the Seventh, that if any man could not afford to pay these costs, he was to have his rights and be allowed to come into court with nothing. The only point I want to make about court costs it not that you should abolish them, not necessarily that you should reduce them, but that you should always have in mind the fact that there are two great principles involved. If it is right to charge costs for the privilege of using the courts, keep in mind distinctly the fact that the courts exist to do justice, and if by chance these two principles meet and one has to yield, let it be the system of costs that backs and gets out of the way, so that the principle of doing justice may have the right of way. Now, unfortunately, gentlemen, until recently in this country the courts and the legislatures have worked it the other way around. They have lost sight of the fact that the system of costs, which grew up to add somewhat to the state's revenue, was never intended by the men who built it up to be a prohibition so that if a man could not meet the expense he should be entitled to his day in court.

The most striking case that I can bring to your attention is a Wisconsin case where a man named Campbell brought suit against a railroad company. The railroad company moved that Campbell be obliged to furnish bond for the costs. Campbell replied that he was a poor man and could not put a bond, and the trial judge threw his

case out of court. Campbell appealed to the supreme court of Wisconsin, and the Supreme court of Wisconsin said that they had no statute which permitted a man to sue forma pauperis, that is, suing without having to pay costs. It seems absurd that a poor man should not be allowed to litigate. Now, gentlemen, I venture to remark when any citizen is not allowed to litigate—I do not blame the Wisconsin court, that may have been the law, and I suppose the blame must rest on the shoulders of the soverign people of that state,—but I submit to you this proposition, that if organized society chooses through its laws to devise a system which in actual practice operates to outlaw a man like Campbell by throwing him out of court, that organized society is itself to blame. You see, gentlemen, it is a vicious circle. Very often the reason a man has not the money to pay the court costs is because of the wrong for which he seeks redress, as, for example, if he has not been paid his wages for three or four weeks. It is a vicious circle. He goes to court because he needs money, and he cannot pay the court costs because of the very difficulty, the very wrong, which makes them seek court relief, and yet, gentlemen, I can say to you in all solemnity that it is just within that circle hundreds of thousands of honest wage earners have been caught in this country and are still being caught. The solution is a simple one. I think democratic America in the twentieth century might well follow the example of England, who, in the sixteenth century passed a law providing that the judges could in proper cases for cause shown, permit a person to sue in court without prepayment of costs. That will cure the whole situation and does not mean any real diminution of revenue to the state from the system of costs. Now, the third difficulty has been with counsel, the expense of hiring lawyers. The nature of that difficulty will be perfectly clear to us on a moment's reflection. We all know, of course, that if any man wants to be advised as to what his legal rights are he must have the assistance of a lawyer. If he wants to take a case through court he

must have the assistance of a lawyer. A man must have a lawyer in order to make the administration of justice work. I think we can all agree on that. So can all agree I think on the second proposition. I take it that some of you gentlemen here are lawyers, and this will appeal to you as it does to me. We lawyers are all human beings, we have families, we have children, they have to be fed and they have to be clothed. Therefore we have to be paid a reasonable fee for our services. When you put the two things together it results in this dilemma. There are hundreds and thousands of good American citizens who need the services of lawyers in order that they may receive justice, and yet who are unable to pay the fees which the lawyer must properly charge for his services. Now, there is that great dilemma in the existing system of administration of justice in this country. There are two methods of solving that difficulty. The first method is by making the lawyer unnecessary. That cannot be done entirely. It can be done as to certain classes of cases, and with your permission I would like to tell you about the small claims court which now exist in this country. These, gentlemen, are not distinct and new courts, they are merely sessions of existing courts. They are called distinct courts because they have developed a new and rather enlarged procedure and if I refer to them as courts please do not understand me as asking you to establish more courts, I think we have altogether too many courts in the country everywhere as it is today. I can best illustrate the small claims court by telling you a story of an actual case that I have heard tried in Cleveland sitting on the bench of the small claim court. Call it case of Mr. A against Mr. B—Mr. A, a tailor, pressed a suit for Mr. B and rendered a bill for four dollars which had not been paid. He took the bill to the clerk in Cleveland small claims court and he first called up Mr. B but he could not get payment by telephone so A's bill went on the county court docket and A swore to it. A copy of the bill was mailed and delivered to the sheriff who put it down the mail chute so that

the class of service was only 2 cents, on account of it being delivered by Uncle Sam, and he was told to be in court on the third following day. It was on the third following day that I was in court when this little matter came up and A and B stepped to the bench, they both came up to the bench, much as I am standing before you gentlemen now and the judge talked to A and satisfied himself that the work had been done and the bill not paid. Then he turned to B and asked "why have you not paid the bill?" B said "I will tell you judge; when that suit was delivered the man insulted my wife and I will not pay a man who insults my wife." The judge turned to A and said to a "how about that?" "Well," said A, "I did not deliver that suit but my boy did and I will admit at times he is inclined to be a litle fresh." The judge said "very well you go into my anti-room and telephone to Mrs. B and say you are sorry;" and A did so and came back. Judgment was rendered in favor of A for four dollars and B paid the bill by handing to A four dollar bills. They shook hands and said "thank you, judge," and walked out of the court room arm in arm. I claim that that court is an advance over any court we have in Massachusets and possibly over any court you have in Pennsylvania for the handling of that sort of case. In other words, gentlemen, there are certain types of cases, little cases, where informal direct procedure, not only permits justice to be done but eliminates the expense, because in a simple little dispute like that there is no need of technical and cumbersome rules of evidence and certainly no need of lawyers fighting with each other about a little four dollar bill for pressing a suit. In other words, as to that class of case, if some court in this jurisdiction under the constitution which you are drawing has power to regulate rules of procedure and evidence then you can in yours, establish sessions in municipal courts where that same thing can be done as it is done in Cleveland, and in about seven other states in the country today.

Domestic relations courts also are solving the problem in a number of cases through their system. They do give a very real amount of legal services to persons who come before those courts, but although you can in certain fields, such as small claims and domestic relations, and the injured workmen under the workmen's compensation act, although in those fields you can by mechanical readjustment, intelligent rearrangement, make the attorney unnecessary yet the truth remains as to the great field of the law and so to most litigation the attorney is the integral part of the administration of justice and you cannot get along without him. As the supreme court of the United States says, the lawyer is just as much a part of the court as the judge and that is true, gentlemen, in the function that the performance of the lawyer is just as important to the administration of justice as is the judge. That conception lawyers realize when they are reflecting, but it is a thing they do not act on in this country, that the lawyer is a party of the administration of justice. The importance of that point is this: If we agree that it is the duty of a civilized democratic state to see that justice is done betwen its citizens then it is not enough for the State to build court houses, pay judges' salaries, jurors fees and all the rest of the administration of justice, and leave out of the count the lawyer. In other words, if the lawyer is necessary to the administration of justice and if it is the duty of the state to see that justice is done between man and man, then it is the duty of the state to see that every citizen has somehow the services of a lawyer, because without the lawyer the whole machinery is virtually unworkable.

I do not want to see that carried any further than it has to be carried, but I am prepared to see it carried as far as necessary to guarantee equality of justice to everybody. Now this idea of supplying lawyers gratuitously to people who cannot buy lawyers' services is not new. The curious thing—perhaps not the curious but the typical way of meeting a situation of that sort is, first, private philanthropy

coming into the field. Those private philanthropists are called the legal aid organization. They are nothing but law officers, gentlemen. The only difference between them and another law office is they have more clients than any other office, but the clients do not pay the fee, the lawyers are paid salaries, paid by general contribution from the charitable orders. There are today forty-one such organizations in this country, comparatively recent most of them, grown up since 1910, and yet, gentlemen, those organizations, new as they are, are called upon already to furnish lawyers to one and one-half million American pepole and they have collected cash sums for those people aggregating about $7,000,000.00. Now that shows the truth of the whole proposition. In the West, which I think is still a little more progressive and willing to take chances than we are in the East they decided that it was not right to leave a function of that sort in the hands of a private philanthropist, but that it was something that had to do with the administration of justice and in that field private hands must be off, that it was a concern of the public and so they started the idea of municipal legal aid bureaus. The first was in Kansas City and there are about seven of them now. It is perfectly clear to my mind that this legal aid work, this business of guaranteeing justice to persons by giving them the services of the lawyers must become a public function; it cannot remain in private hands. I sincerely question whether when it becomes a public function it should be allowed to become a municipal function. It seems to me that this legal aid work must be operated under the control of the judiciary because legal aid work is a part and parcel of the administration of justice, so that I hope very much nothing may be written into the present construction or the constitution that you are working on which will prevent that development from taking place.

By some coincidence, gentlemen, we have in the State of Massachusetts a Judicatory Commission which is working along the same lines that your gentlemen are working here. It seems to me if your

commission and our commission in Massachusetts can have the courage to see this problem clearly and go forward sanely and yet courageously, it is not at all unlikely that we may control the course of the development of judicial procedure in this country, for the next generation, for Pennsylvania and Massachusetts are two states that have great influence with the other States of this country and if we can so go forward and make it possible for every man to have his day in court and have adequate representation when he is in court we will come very much nearer to a realization of our two fundamental ideas of a democracy, which are these: Ours shall be a government of laws and not of men, and before these laws all men shall be on the basis of absolute equality.

If I can answer any questions gentlemen I shall be happy to do so.

Mr. FISHER. Does this provision, Mr. Smith, cover what you have in mind or have you any suggestions to make.

Mr. SMITH. That provision does not.

Mr. FISHER. We will be very glad to have your suggestion.

Mr. SMITH. I understand that a new provision has been drawn - perhaps I may be anticipating something that the Secretary ought to say—there is a provision which has been drawn, which I have seen, that is, I am sure, better than that.

Page 35, this is all right. There are two difficulties with that. In the first place I think the system of providing a method whereby persons should be able to go into court without payment of costs should be left to the rule-making power of the court.

It should be left to the rule-making power of the courts rather than to the general assembly, merely on the ground that it is a proposition which affects the technical side of the administration of justice and it would seem to me, therefore, safer to leave it in the hands of those men who ought to be expert on the technical side of the administration of justice, that is, the judges of the higher courts of the land.

Mr. FISHER. You would suggest that our supreme court should be permitted to make rules which would take care of this class of litigation.

Mr. SMITH. I certainly would, sir. And the second difficulty is this: You have attempted to make it possible for all persons to have the assistance of lawyers by allowing the court to appoint lawyers for such persons. The difficulty with that proposition is this, that is the system which is now working in England and it is excellent, it is wonderful in comparison with what exists in other states, and we in America can go one step further if we want to. If any one has no lawyer and needs one, counsel can be assigned to him and in England, as would happen under this proposed section, you would have a shifting group of lawyers being assigned to the different cases as they come along. Now in America with our genius for organization and craving for efficiency we have built up something that they never heard of in England—legal aid organizations, a group of lawyers like a hospital staff for example, a permanent group who become very expert in the cases of the poorer people, who handle them with great despatch and thereby can do it more economically and efficiently, and which being permanent for three or four years at a time, instead of shifting from case to case, result in a centralized responsibility.

Mr. ALTER. Of course, this will permit the court to adopt a certain system, as to permanently appointed certain men to that kind of work.

Mr. SMITH. It might be worked out, although I should imagine a draft could be drawn which would make it somewhat easier for the court to regulate the matter. I think they ought to have that power.

Mr. FISHER. Perhaps it would be well to embrace both ideas.

Mr. SMITH. That is true.

Mr. FISHER. It could be done by appointment to better advantage.

Mr. SMITH. It could be a separate tribunal.

Mr. FISHER. You do have both systems now.

Mr. SMITH. A man like Mr. George Wharton Pepper, could be appointed as counsel and have him try the case.

Mr. FISHER. We do that as a matter of fact in our county courts.

Mr. SMITH. Appoint counsel?

Mr. FISHER. Yes, sir.

Mr. SMITH. In similar cases?

Mr. FISHER. In similar cases.

Mr. SMITH. In civil cases?

Mr. FISHER. I do not know whether it is done in civil cases.

The CHAIRMAN. The comparison is between barristers and solicitors. Barristers are in continuous attendance. I remember that when Lord Charles Russel led the bar of England, it was said that the meanest criminal in the docket could summon him in his full panoply as a barrister on the presentation of a sovereign, or any barrister that did not hold a fixed brief. So we would have to adopt some such system as that in the large cities, so that lawyers would be in attendance on the court whenever their services were required.

Mr. SMITH. Yes, but I do not know what time you are referring to. I understand that in 1903 they had occasion to revive their criminal code in order that the prisoner could have adequate defense in his suits and providing that no lawyer is at liberty to refuse an assignment, so I take it there has been some little difficulty there.

The CHAIRMAN. This condition could be better handled through the courts than through the legislature, is that your thought?

Mr. SMITH. I believe so, sir.

Mr. STACKPOLE. This leads to new litigation without end.

Mr. SMITH. I think not. You would think that the thirty-one legal aid organizations would have brought about a vast amount of litigation which would not otherwise have been brought. I think the general opinion is to the effect that if anything it has a tendency

to reduce litigation because ninety per cent. of the cases sent to legal aid officers are settled. The trouble is that where a person thinks he has a grievance that cannot be heard he is an enemy of society, but if they can argue them out in court or are told by an honest lawyer that there is nothing in the case, they go away satisfied. There will be a certain increase in litigation in the sense that there would be more cases brought than there have been. But it seems to me this is as it should be.

Mr. FISHER. Many of those cases would be washed out before they got into court.

Mr. SMITH. In the regular course of events, many of them would be washed out before they got into court. In my opinion the increase of litigation does not mean an increase to the tax payer. In the small claims the lawyers do not always appear in court.

Mr. FISHER. Judges do appoint lawyers.

Mr. SMITH. Yes, they do. You must provide that they have one good fair, square trial before a good fair, square judge and then the claimant will have no further right.

The CHAIRMAN. I am sure we are very much obliged to you for your remarks.

Mr. SMITH. It has been a pleasure to be here.

ORAL STATEMENT
OF
MR. JAMES COLLINS JONES,
PHILADELPHIA.

MADE BEFORE THE COMMISSION, APRIL 14, 1920.
RELATING TO AMENDMENTS PROPOSED BY HIM TO ARTICLE V.
CALENDAR OF MAY, 1920, PAGES 32 TO 54.

Mr. JAMES COLLINS JONES. Mr. Chairman and Members of the Commission: Mr. Smith doubtless made reference to a draft of a section that I wish to add in regard to a proposition that some of us would like to see put into the present constitution, not only a power but also a duty upon the Supreme Court of the State to make rules.

The way that this problem of the judiciary comes up to me and to some of my associates is that we think there ought to be a provision in the constitution, the constitution ought to be very much of a skeleton, the great danger is to get too much there, let us get just as little there as we can have, and then trust to the force of circumstances to create the change that we need to answer our requirements. My thought is that you do not want to provide for any more courts than you have to. I should very much like to see a provision for a supreme court, and such other courts as the legislature may create. Now, I recognize that is a situation that you cannot quite accomplish. I believe that the demand for the organization of common pleas courts would be so strong throughout the state that you would probably have to give some recognition to the common pleas court so that I would compromise if I were solely responsible for this thing, by providing for a supreme court, for common pleas and for orphans' courts, and beyond that I would not go. I would give the legislature the power to create such other courts as it may determine to be necessary, and I say beyond that I would not go. I speak with some diffidence as to the situation as to the justice of the peace courts outside of Philadelphia.

The CHAIRMAN. Would you leave the superior court in?

Mr. JONES. I would not put the superior court in. It is still an open question as to whether the division of our appellate court as we at present divide that court is a desirable thing. It may be desirable to create one appellate court in two divisions, it may be desirable to maintain the existing situation, but let us find that out and if it is desirable to change the existing situation and have one appellate court of two divisions let us do it. You have created a supreme court and I do not believe you can do much better than you have done. You give it jurisdiction. So far as this Commission is concerned, you change the jurisdiction of the old King's Bench, take away from it some of the old original jurisdiction, but you have got

a real court there. You have provided for the election of men for a long term. Now you have got a hinge from which everything else can swing. I have not been in the rural districts as much as you have been, but whenever I have occasion to go there I am tremendously impressed by the dignity of the local judge. He occupies a place in the community to which we have nothing comparable in our larger cities, and it is a very important local institution, and I think to have the constitution that you are going to submit to the people leave out that institution you create an ill feeling that no amount of theoretical justification will quite get over. So, I do not, from my point of view, regard it as worth while to consider here the theoretical desirability of getting rid of the common pleas. I do not think you could. Then, having gotten the common pleas, I think it is desirable to provide for the orphans' court. The orphans' court is one of the great necessities of Pennsylvania. I think all of us Pennsylvania lawyers have reason to be proud of our orphans' court system. We have got a body of experts and they have performed their functions with dignity, with correctness and with economy.

I would end my compromise as to putting in the supreme court by putting in the common pleas and orphans' court. Certainly, please do not put anything in about the justice of the peace or magistrates for philadelphia, and do not put any substitute in. Let us have a free hand there. Now, if the people outside of Philadelphia want a justices' court of some sort, that is all right, but I think this is a psychological opportunity to clean up that situation as to justices of the peace. I presume that you may be forced to do it, but I very much dislike to see the hand of the legislature tied on the problem of the justices of the peace. I would like to see the legislature free to clean that up. I would define the personnel of the common pleas courts in the different judicial districts but I do not think you accomplish anything by the description of a jurisdiction. If the description of jurisdiction means any thing you have got to add a clause

that that jurisdiction cannot be taken away from them. The clause that you at present have, that the jurisdiction now possessed by the judges of the ocmmon pleas cannot be taken away, is ineffective. That sentence on its face seems as though it would prevent a depredation of the jurisdiction of the common pleas, but the supreme court has decided otherwise, so that unless you have a section providing in terms that the legislature cannot take away the jurisdiction, there is not much accomplished by going to the trouble of defining jurisdiction. We have got to do as the supreme court defined; you have got its appellate and original jurisdiction defined; you have the common pleas court defined, as to personnel and districts; you have the orphans' court defined and then you are free for future experiment.

There is one other point that seems to me on its face extremely attractive, but I fear it is illusive, and that is the prohibition imposed upon the legislature as to the imposition of non-judical functions upon the common pleas judges. We all know the generation of the thought and all of us lawyers I think are in sympathy with the generation, but I think it is a very dangerous prohibition. Before you venture to maintain such a prohibition, you would have to be very clear in your mind as to just what non-judicial functions common pleas courts are now performing, and you would have to be very clear in your mind that those certain functions that you thought were judicial would be held to be judicial, and you would likewise have to clear up certain things that are now nonjudicial, but are omitted from the power of the common pleas judges. I think there are doubts along that line. What is the opening of a road? Is that judicial? Unquestionably that function in the quarter sessions court has been performed from time out of mind, but I submit that it is fundamentally an administrative function. It is the function by which the power of eminent domain, and so on, is carried out. You take the question of appeals from tax assessment. I think most of us would say that it was not judicial. But we know the Supreme Court of the United

States has over and over again said you cannot construct a tax system with no court in it. It is not necessary to give the right to every jurisdiction to review tax assessment. Therefore when you provide for an appeal to the common pleas from a tax assessment are you not conferring a function or something else? Of course, in our courts at present the quarter sessions court licenses the detectives and they make appointments to fill vacancies in other cases. In your third article you confer a nonjudicial function when you provide that the court shall have the right to remove justices. So that the problem of what is judicial and what is not judicial is a little subtle. Then you come to the practical aspect of things. I view with a good deal of horror the deprivation from our courts of the appointment of viewers. It seems to me that it is the proper place to put the appointment. It is clearly nonjudicial, but it is certainly the first cousin to judicial. The board of viewers is part of the general judicial machinery, and it would be an anomaly if the judges did not have the power to appoint that board. I would view with considerable regret the removal from our common pleas court of the jurisdiction to appoint the members of our board of city trusts. Certain things grow up by tradition, and you cannot disturb a situation without imperiling the safety that tradition has begotten. We have a tradition in Philadelphia that nobody shall be appointed as a member of the board of city trusts who has not met a certain standard, and we have today a very efficient tribunal. It might be we could get an efficient tribunal in some other way, but we are suffering from no evil by reason of that appointment.

Mr. FISHER. Would any other agency provide you with the personnel equal to that?

Mr. JONES. It might, and it might not. But the thought in my mind is that we have two things, an agency and a tradition, a certain tradition that hangs around that appointment, and the agency we have has got to live up to that tradition. You start an agency right

and keep them in a certain path of right for many years, and it is rather improbable that they will get out of that. It is due to inertia. At the present time we have an agency, and by inertia we hold to that tradition.

Mr. FISHER. It has been suggested that the mayor could make appointments of an equally high standard.

Mr. JONES. I agree with you that the mayor could make the appointments, and perhaps of equal standard. We have perhaps eliminated many applicants, and that is what gives joy in their existance. It is a question. You take away the park commission we have. We have been successful in getting a body of public spirited citizens to serve on our park commission. I presume we could take the same proposition you have offered, but I would hesitate to try the experiment. We all know what has brought about this revulsion. All of us lawyers regret that the court had anything to do with the liquor licenses, and we had to take chances of everything else in order to get the liquor licenses away from the judiciary; but today the liquor license is no longer with us, that function is no longer to be regarded. We have a body of very high grade experts in the supreme court, and we think we have a body that is eminently competent to perform a certain function, and it ought to be made very clear to that body that they not only have the power to do it, but that it is their duty to do it; and I suggest that you put up to the supreme court the regulative duty and power. I will read the languages in which we have put that thought, but before doing so I want to say a word or two about the situation. I think we all feel that our substantive law is a pretty good body of law, and we all feel that the administration of justice is proper, but the procedure is appalling. It is not only the poor man who cannot afford to get into the court, but the rich man cannot afford it.

Mr. FISHER. He does not want to.

Mr. JONES. But the procedure is so great that the man cannot afford to take the chances of delay, and it also affects the practitioner. Of course, there are some lawyers who do a great deal of the work and take a joy in it, but the horror of the delay and the uncertainty of getting business disposed of is such that you find in the main the younger men of the bar doing the greater part of the work, the older men feeling that they simply cannot afford to do it. In many instances you see men who express themselves that way, who like the work, and who feel joy in doing the work, and yet the delays are so great that it shuts out a great many others. Now, ninety-nine per cent. of what we call adjective law, which is the law of procedure has to be whipped into shape, and in proposing that the supreme court be given the power to make rules of procedure we are not going into uncharted seas. It has already been done in England. It is conservative. It is the especial duty of the supreme court to regulate legal procedure and to adopt the processes of justice to the necessities of the classes of litigants, and in the discharge of duties proposed by this section the supreme court shall have power to prescribe forms of action and to regulate pleading and process and prescribe methods of proof and provide the way in which records shall be kept. The suggestions we propose are as follows:

(See Calendar of May 11, 1920, p. 36, Art. V, Sec. 3-C.)

ART. V, SECTION 3-C (New).

Regulative Power and Duty of Supreme Court.

It shall be the duty of the supreme court to regulate legal procedure in courts of record and to adapt the processes of justice to the necessities of all classes of litigants.

In the discharge of the duty imposed by this section, the supreme court shall have power to regulate forms of action, pleading and practice, proof, the way in which judicial records shall be kept, and the conditions under which fees and costs

may be remitted and counsel assigned without expense to litigants; and to regulate and control the activities of any agency, public or private, rendering legal aid.

Regulations when promulgated by the chief justice shall have the force of law until modified by the general assembly and shall operate to repeal all laws heretofore enacted inconsistent with such regulations.

Courts of record shall have the power to make their own rules not inconsistent with such regulations or with general laws.

Now, what authority have you set up here? You have the tribunal that is best fitted to do the work. You could not conceive of a tribunal better qualified to perform the duties you impose upon them. The members of that tribunal are going to be men who will face the problem from the day in which they live, so that they see before them the result of their work and how mistakes could be corrected. Now this tribunal will have a free hand on all questions of adjective law, and can decide how problems of litigation can be brought and disposed of before the court in the cheapest and most expeditions and satisfactory manner. You are not conferring upon the supreme court any greater rule making power than the legislature has time and again conferred upon administrative officers. It is just about the same scope of power that is conferred by Congress time and time again upon administrative tribunals. You are putting up to the court this problem of administering justice to the poor in a way that can be worked out in detail and developed as experience develops it, and I do not believe that problem can be worked out in any other way. We all feel that something ought to be done, and I do not believe anybody has confidence that any machinery he has in mind is going to prove satisfactory. There is a very great difference of opinion as to whether the step should be taken in the readaptation of the judges of existing courts or the creation of new courts. Personally I am strongly against the creation of new courts. I have

a holy horror of the minor courts, because so frequently the result of that sort of thing is that you get the judicial trappings and mighty little else. If you can take a court made up of the best material that you can get to sit on your court of general jurisdiction and then reorganize that so that these men can administer justice to the poor, you are going to have justice administered to the poor. You have men of dignity, of character, and learning, and every now and then you strike a man with a special sort of genius for that sort of thing.

Mr. FISHER. Have you anything concrete?

Mr. JONES. Unfortunately, no.

Mr. FISHER. Could you do it on the same lines as the appointments of masters?

Mr. JONES. My thought would be to do it through the common pleas courts. Suppose we had a large number of common pleas judges, fifteen or twenty; now by their rules or by the supreme court rules, they would set up a small claims court, and it should be the duty of one of those judges to hold that court. My thought would be that you could take men of the right sort of material who would hold that small claims court without counsel. He would sit there, send for the people and interview them and if he found he had all the information before him that was required he would go ahead and settle the case. If he found that other witnesses were required he would see that they were summoned. If he found that the situation was such that he would have to have counsel he would see that counsel was assigned, I would not be prepared to say really what would be the limit as to that.

The CHAIRMAN. You would have the court of common pleas, and that could be classified completely to meet any exigency.

Mr. JONES. Yes, it could be classified to meet any exigency. The minor courts have many advantages. To create minor courts, as many of those courts are, and provide that there shall be no appeal, you provide an impossibility. You cannot get a record out of such

a court. It seems to me that you have got to recognize, when we talk about administering justice to the poor, that we are not talking about a simple job, it is not a job for a tyro, it is a job for the finished judicial officer. You can get the finished judicial officer out of the court of common pleas, you are not going to get them out of the lower courts. That is just as true of courts as it is of money. You take good money and circulate it with bad money there is the awful contamination in the case, so that the good money goes out. The bad court besmirches the good court and you cannot keep up your standard. The office of judge does not mean the same thing in all judicial districts. It is different, for instance, in the rural communities. In the rural community you would not have any great difficulty in getting a good judge to sit on the bench. In the rural community the position of judge is one of great dignity. Generally speaking, in the populous districts, in the cities, for instance, the title "judge" means nothing. Nobody in the community knows what it is. He may be a police court judge, or a judge of any other court.

The CHAIRMAN. Would it not be a good thing for Philadelphia Mr. Jones, if you took the courts out of the public buildings and put them into a courthouse?

Mr. JONES. Yes, I think that is so, but I feel very much about that as I feel about gamblers, they are a mighty bad substitute for the man. You could get a certain judicial number and they may perform the services, but the main thing is to get the men, men of character, men of learning, and men of dignity. When I go to the bar I am mighty sure that gowns would not add anything to the dignity of the court. We were very proud and are still very proud of it. Of course, when you go to the lower courts, you find that they view those trappings with an avidity that is startling. It is just in direct ratio, or in inverse ratio, to the need for it. So that I would hope to see the supreme court of the state thoroughly recognizing this duty for working out a proper scheme of procedure, and then seeing that the

scheme works out, that it is tinkered out, remedied until it is reasonably efficient, and seeing the court of common pleas with men on the bench of character, men of character and with such a sense of social duty as to recognize that they are performing a very enviable job when they are administering justice to the poor. I believe that can all be done by drawing from the courts of common pleas, which, in the main, have been very satisfactory courts, and have been well manned in the state.

Now, there was one other feature that Mr. Smith talked about, it was a feature that troubled those of us who were working on this draft a good deal. I was very much impressed with what he said to the effect that we did not sufficiently size up the importance of this legal aid society and the importance of establishing the proper relationship between it and the court. We recognize that there ought to be some legal aid society because this could perform a great public function. Now, what is to be the relationship between that legal aid society and the court is a puzzle. We worked it out by giving the court the right to investigate and publish the result. The idea we had before us was that these legal aid societies would be institutions that would depend largely for their success upon public support, and if the court had the right to investigate and publish the result, probably that would be the only source of quasi jurisdiction that would be required. Mr. Smith would go very much farther than that, as I understand it, and he would give the court to power to create, to provide, regulate and control. I must confess that I can hardly agree with him in giving the court the power to create such societies. It may be well to give the court the power to regulate and control such societies. His idea is that these legal aid societies would be the agencies through which the poor people would get their assistance of counsel and that the courts ought to approach the same sort of jurisdiction over those legal aid societies as they have over lawyers.

Of course, every member of the bar is subject to the control of the court and it may be that it would be desirable to make every legal aid society subject to similar control.

There are a number of details in this article that I shall not dwell upon because I understand that Mr. Roberts is going to be before you on this article on Tuesday, and at that time he will probably have the article in the shape as he desires to have it submitted to you. There are a few other things in the draft that I would like to say a word or two upon if I may.

The CHAIRMAN. What would you do with these district courts?

Mr. JONES. Wipe them right out.

The CHAIRMAN. Wipe them right out. You would not use them at all?

Mr. JONES. I would not use them at all.

The CHAIRMAN. Then you would not have any justices of the peace.

Mr. JONES. We have a section of the constitution that takes care of that. Of course, you cannot rip off all of the present machinery. You have got to have a clause in the constitution that everything remains as it is until it is changed. I have a very strong desire to get rid of them.

The CHAIRMAN. What would the English race do without justices of the peace?

Mr. JONES. The English race has been used to justices of the peace, but the English justices of the peace are a very different sort of individual from our justices of the peace.

The CHAIRMAN. Some of them in the country would compare very favorably with the best of the English justices of the peace.

Mr. JONES. I think that when you touch that situation in Philadelphia you are up against a very difficult problem right away. I would have no faith in anybody attempting an immediate remedy. It is quite possible that the remedy might be to cut out all the juris-

dictions altogether, except the landlord and tenant jurisdicion, and then to cut dwon the magistrates right away. You have to provide for the committing function. You have got to have officers to do that. Whether the municipal courts could take care of that committing function, I do not know. I cannot believe that the civil jurisdiction the magistrates have performs any useful purposes at all.

Commonwealth of Pennsylvania

THE COMMISSION ON
Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 40

LOCAL AND SPECIAL LEGISLATION.

Harrisburg, Pa., May 11, 1920.

Hon. Wm. I. Schaffer, Chairman,

Dear Sir: I understand you desire me to submit a brief on the subject of local and special legislation, with a statement of the reasons urged by Mr. Samuel B. Scott of Philadelphia in favor of his proposed amendments to Article III, section 7-A, and Article XVIII-A, section 2-B.

Article III, section 7, of the Constitution prohibits the general assembly from passing any local or special law with respect to a large number of enumerated subjects, covering almost the entire field of possible legislation.

Taken literally, this would have prevented almost all legislation, since it means on its face that no law can apply to one human being or political subdivision which does not apply equally to all others. The necessity of an escape from this conclusion was early seen by the Supreme Court, and in 1875 it was decided that the constitutional restriction did not, under certain circumstances, apply to legislation for classes of persons or things (Wheeler vs. Philadelphia, 77 Pa. 338). In that case an act was approved which divided cities into three classes and provided a special method of increasing the indebtedness of those of the first class.

The possibilities of classification are, of course, boundless. If cities can be divided into three classes, why not into an indefinite

number, limited only by the number of cities? The Supreme Court saw this danger and in Ayar's Appeal, 122 Pa. 266, refused to permit a division of cities into seven classes. It was there declared that classification was only proper where there exists a necessity "springing from manifest peculiarities clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately that would be useless and detrimental to the others."

The application of this rule has caused a great deal of doubt and litigation. The Supreme Court must in every instance determine whether there exist those manifest peculiarities which justify classification. . In many cases no one can tell in advance whether or not the court will approve a given classification. The determination of the question is, by its very nature, not subject to fixed and easily applied rules, so that a very important field of legislation is frequently clouded with doubt for months or even years after the passage of statutes within its bounds.

These observations are true of local but not of special legislation. Local legislation is, of course, only a kind of special legislation, a kind which concerns itself with the special needs of localities. It is the kind of special legislation for which there is constant and legitimate pressure from all parts of the State. The other kinds of special legislation, such, for instance, as statutes giving special benefits to one class of the community, are passed much less frequently and give rise to so little doubt and litigation as to justify the conclusion that the law with respect to them is satisfactory. Examples of this kind of legislation are statutes giving to those engaged in certain occupations special remedies for the collection of debts.

Confining this brief then to local legislation it is to be noticed first that classification according to population is much the commonest form. The Supreme Court recognizes the fact that communities of different sizes need different laws but the difficulty of course lies in

determining how great the discrepancy in size must be to warrant a different law, and what kind of a different law the discrepancy will warrant.

Thus, as I have pointed out, three classes of cities have been approved, but not seven classes. This latter decision seems to have put an end to any attempt further to classify cities according to population. But a difficulty still exists in the use of these classes. There cannot be differences in general law such, for example, as the law of contracts or of evidence, between cities of different classes; there can only be differences with respect to the law regulating municipal machinery—"relating to the exercise of corporate powers or to corporate officers and their powers and duties" (Ruan Street, 132 Pa. 257).

But the application of this rule is not easy. In the Ruan Street case, for instance, the Supreme Court held that cities could not be classified for the purpose of providing a special method of opening streets in those of the first class, although it would certainly seem that this related to the exercise of corporate powers.

In legislation with respect to counties, much more extensive classification has been permitted; but it is impossible to tell in advance whether a given statute will be approved by the Supreme Court. For instance, an attempt to classify separately counties of between 100,000 and 150,000 in population, for the purpose of legislation with respect to the fees of county officers, was unsuccessful, because the Supreme Court held that the existing constitutional number of 150,000 (Article 14, section 5), is the dividing line between the only two permissible classes of counties, so far as legislation in regard to fees is concerned. (McCarthy vs. Commonwealth 110 Pa. 243).

An act which gave a right of appeal to the Court of Common Pleas from real estate assessments in all counties of less than 500,000 population was declared unconstitutional because it excluded Philadelphia County. (Scranton v. Silkman, 113 Pa. 191).

In each of these cases there was an excellent argument on both sides of the question and no one could do more than guess which would prevail with the Supreme Court.

So with other kinds of classification not based upon differences in population. The Supreme Court will not permit a classification of counties according to whether or not they are coextensive with cities, (Blankenburg vs. Black, 200 Pa. 629). Of course Philadelphia is the only such county, but this very fact makes its problems different from those of any other county.

An act providing for the consolidation of two contiguous cities in the same county was held unconstitutional, because at the time of its passage it applied only to Pittsburgh and Allegheny, (Sample vs. Pittsburgh, 212 Pa. 533) ; but a similar act providing for the consolidation of any two nearby cities was held valid, (Pittsburgh's Petition, 217 Pa. 227).

The test in these cases is the degree of probabality that the class will ever increase. The Supreme Court thought that the chance was very small that any city except Philadelphia would ever become coextensive with a county, and so they declared the act in Blankenburg vs. Black to be in effect local legislation for Philadelphia. So too, with the act in regard to two cities in the same county. Obviously the determination of the requisite degree of probability is a difficult matter, and the necessity for it leaves important statutes in doubt until approved or disapproved by the Supreme Court.

It would be impossible in the limits of this brief to present a complete survey of the litigation which has occurred with respect to the whole subject of local and special legislation. I have simply given enough illustrations to show that the evil of the present situation lies in its uncertainties.

Mr. Scott's suggested amendments are intended to dispel these uncertainties, so far as possible, first, by partially enumerating per-

missible kinds of classification, and second, by extending the principle of "home rule" so as largely to increase the permissible kinds of local legislation.

Mr. Scott's suggested amendments together with his explanation of them are as follows:—

1 "Amend Article XVIII-A by inserting a new section 2-b as follows:—

> *"The General Assembly may delegate to the municipalities power to create, change, and regulate their own organization and to regulate their own affairs."* (Page 89 of the Calendar for May 11, 1920.)

"This section suggested is intended to make home rule for municipalities possible. It is merely permissive in its nature, and, until acted upon by the Legislature, would introduce no change into our present system. The general principals of local home rule are so widely approved that the chief question involved is the practicability of the particular method by which the principle is to be achieved. The chief danger to be apprehended is that of the difficulty of drawing the line between those things which are properly the affairs of a particular municipailty and those which are of general interest.

"Under the clause as suggested the whole matter would rest with the Legislature and there could be no conflict of authority. The power to delegate is, of course, also the power to resume, so that if any municipality abused the power delegated to it by the Legislature it could resume the power so delegated and thus at once cure the abuse. If the line of demarcation between local affairs and those of general interest had never been the subject of judicial determination, there would, of course, be a considerable danger in proceeding in the dark, but, as a matter of fact, this question has frequently arisen in this State in the past. It has been frequently held that cities can be classified only for the purpose of legislation which regulates their local interests, and there have been many cases which

discussed the question as to what are and what are not "local interests." The case of City of Scranton v. Whyte—148 Pa. 419 (1892) not only discusses this question itself, but collects a number of authorities which also discuss it."

Mr. Scott also proposes to amend Article III, section 7-A, to read as follows:—

> *"No law shall be held to be a local or special law which operates equally upon every member of a class. The General Assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population. The General Assembly may classify municipalities upon the basis of conditions requiring special regulation, including the basis of the coincidence of boundaries of different muncipalities, or other relations between them requiring special regulation.*
>
> *"No law shall be held to be local or special, which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality, as provided by law."* (Page 15 of the Calendar for May 11, 1920.)

"The subject of local and special legislation is intimately bound up with that of home rule. The pressure for local legislation is largely an expression of the ineradicable desire of the populace of the several localities to have their local affairs regulated in the way that seems to fit to them. The abuse had become so great by 1873 that the present Constitution forbid such legislation entirely. The Constitution, however, could not prevent the desire for local legislation and for separate treatment of the various communities. Indeed, the necessity for such local treatment was so great that the theory of classification was immediately invented by the Legislature and upheld by the Court (Wheeler vs. Philadelphia, 77 Pa. 338.)

"The great mass of litigation which has accumulated upon the subject of local and special legislation is due to the fact that the desire for such local treatment still continues and seeks to find expression through an enlargement of the theory of classification, while the Supreme Court, having been driven to uphold the theory of classification only by necessity, has been constantly endeavoring to limit its application.

"If the home rule clause suggested above be adopted, the desire for local and special legislation would practically cease, but if such a home rule clause is not adopted it becomes of great importance to study the provisions of Article II, sectino 7, in the light of experience, and to endeavor what improvements can be made.

"It is evident that the subject has not escaped the attention of the commission, for the preliminary draft shows the addition of Section 7-A. The apparent purpose of this section is to enlarge the right of the Legislature to classify, and it, no doubt, intended as a liberalization of the restrictions contained in the old Section 7. It is respectfully submitted, however, that the actual result of the adoption of Section 7-A as shown in the preliminary draft would be greately to reduce the power of the Legislature in the matter of classification.

"Under the present Constitution, as interpreted by the Supreme Court, the Legislature has the power to classify not only upon the basis of population but upon any basis which seems to the Legislature to be proper for discrimination and which is not a mere device for evading the prohibition against local and special legislation. For instance, townships are classified not according to their number of population, but according to the relative density of population.—Commonwealth v. Blackley—198 Pa. 373 (1901).

"County bridges have been classified acording to a very elaborate scheme. In Seabold v. Commissioners—187 Pa. 318 (1898) the Court says, page 323:

'The bridges which are made into a separate class by the Act of 1897 and authorized to be rebuilt must have been:

First, over a river or stream forming the boundary line between two counties;

Second, on the line of a public highway or deemed necessary for the use of the traveling public;

Third, owned and maintained by corporations or private persons or built by public subscriptions;

Fourth, used exclusively for vehicle and foot purposes;

Fifth, destroyed by ice, flood or otherwise or abandoned by the owners and rebuilt (replaced) on another site.'

"These instances are not exhaustive, but are sufficient to show that at present the Legislature has power to classify on other grounds than that of population.

"The wording of Section 7-A in the tentative draft expressly gives the right to classify according to population, and thereby by implication denies the right to classify in any other way. Thus the present power of the Legislature to provide for local diversities would be vastly curtailed.

"Turning now to the text of the clause as suggested in this brief attention will be given to each portion of it in order to show the reasoning on which it is based. The first sentence is:

'No law shall be held to be a local or special law which operates equally upon every member of a class.'

"This sentence, or one of similar import, is necessary to make clear the connection between Section 7 and Section 7-A. Section 7 forbids local or special legislation, and Section 7-A is added for the purpose of showing what things are not local and special legislation, which might be held to be so in the absence of Section 7-A. It is important that this should be made clear by the addition of the sentence suggested.

"The second sentence is:

'The General Assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population.'

"This is nearly the same as Section 7-A of the draft but is more general in terms, embracing all possible kinds of municipalities. The total absence of "poor districts" from the draft of the tentative amendment might well cause difficulty. It is also thinkable that other kinds of municipalities may be created in the future.

"The next sentence is:

'The General Assembly may classify municipalities upon the basis of conditions requiring special legislation, including the basis of the coincidence of boundaries of different municipalities, or other relations between them requiring special regulation.'

"This is a re-statement in the broadest possible terms of what is conceived to be the law at present, but the law at present has grown up under the doctrine of necessity, and the Supreme Court seems to have such a bad conscience on the matter, that it is constantly holding down the power of the Legislature to the smallest possible amount; by stating the doctrine clearly in the Constitution, the course of legislation and judicial decisions in the future will be much smoother.

"The reference to the coincidence of boundaries of different municipalities is made for fear the Supreme Court, under the influence of such cases of Blankenburg v. Black, 200 Pa. 629 (1901)—might hold such coincidence, or other important relation between them was not a condition requiring special regulation. As a matter of fact, the condition of Philadelphia is different from that of other counties in many ways, due to its special relation to the city, and there ought to be no doubt as to the power of the legislature to provide accordingly.

"The final sentence is:

'No law shall be held to be local or special, which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality, as provided by law.'

"This will permit a very practicable species of home rule which has already been adopted with some success by the Legislature but which is so beset with judicial difficulties as to make it practically impossible for the Legislator to know when his act will be constitutional and when it will not, if he attempts to leave the matter to the adoption of local authorities.

Frost v. Cherry—122 Pa. 417 (1888).

Appeal of City of Scranton School District—113 Pa. 136 (1886.)

Lehigh Valley Coal Company's appeal—154 Pa. 44 (1894).

"It might be objected that this method would lead to considerable diversity among the different parts of the state. This unquestionably would be true but it would be a diversity always tending to uniformity as locality after locality adopted general legislation. Also, it would vastly decrease the pressure for special legislation based on the theory of classification. At present, if some locality feels that it has a distinct need it secures the passage of a law based on some classification which will affect that community alone. This classification must then run the gauntlet of the Supreme Court, though perhaps not for years after it was adopted, and the chances of its being declared unconstitutional are very great.

"If the principle adopted in the last sentence in the paragraph suggested by this brief were in effect, the same community could secure the adoption of a general law with local option provisions. This would be clearly constitutional, would be no more injurious than the classification and would give other communities the advantage of adopting the legislation if it fitted their needs. This provision goes

very little further than the present Constitution as interpreted by the Court, but it clears up a very complicated situation and gives unquestionably a power to the Legislature which could be exercised to the very great benefit of many localities."

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 41

REASONS IN SUPPORT SUBMITTED BY PROPONENTS.

Amendments on Calendar of May 11, 1920.

ARTICLES I, II, III AND IV.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman,

Dear Sir: The proponents of amendments, besides in many cases making oral arguments before the Commission in favor of their suggestions, submitted written explanations and in some cases formal briefs. I submit herewith extracts from the various briefs submitted in writing by the proponents of amendments to Articles I, II and III. No reasons in writing were submitted by the proponents of amendments to Article IV. I have not submitted herewith the explanations and reasons submitted in favor of the following amendments which are the subject of separate briefs:

(1) Amendment submitted by Mr. John A. Voll, Commissioner, to Art. II, section 1, on the Initiative and Referendum. See Brief No. 33.

(2) Amendment by American Proportional Representation League, C. G. Hoag, Secy., to Art. II, section 17, on Proportional Representation. See Brief No. 28.

(3) Amendments submitted by Samuel B. Scott of Philadelphia, to Art. III, section 7, and Art. III, section 7-A, on Local Legislation. See Brief No. 40.

(4) Amendment submitted by Kenneth L. M. Pray, Secy., Public Charities Association of Pennsylvania, to Art. III, section 15, on Charitable Appropriations. See Brief No. 36.

The Civil Service Reform Association has distributed among the members of the Commission and placed on file in the Secretary's office, copies of a printed brief in favor of their suggested amendments to Art. IV. (See Calendar May 11, 1920, Art. IV, sections 8-A and 8-B, page 27.)

ARTICLE I.

Section 1. NATURAL RIGHTS OF MANKIND. (Calendar for May 11, 1920, Page 1.)

AMENDMENT SUGGESTED BY THE SECRETARY:

"The adoption of the amendment suggested would place in the Constitution a clear declaration that every person within the jurisdiction of the State was protected in his life, liberty and property. In the present Constitution there is no such clear declaration. Article 1, section 9 merely provides that a person accused of crime cannot be deprived of life, liberty or property. Protecting life, liberty and property in the exact words of the 14th amendment to the Federal Constitution will tend to make uniform the State and Federal decisions on the extent of the fundamental rights of the individual; a most desirable result."

Letter to the Chairman, May 5, 1920.

Section 4. NO DISQUALIFICATION FOR RELIGIOUS BELIEF. (Calendar for May 11, 1920, page 1.)

AMENDMENTS SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"It would be strange and unfortunate if there should be a judicial inquiry made into the religious views of any official as a test of his right to hold office. White, in his work on 'The Constitution,' shows that a member of the convention of 1873

declared that this section, as it now stands in the Constitution, would, as he understood it, disqualify Universalists, who have some heretical notions as to the future state of punishments."

AMENDMENTS SUGGESTED BY MR. JOHN THIEL AND BY MR. W. J. FITZGERALD:

"I would strike out the phrase, 'and a future state of rewards and punishments,' as being unnecessary, superfluous, and probably an obsolete religious doctrine. Thus any one believing in the existence of a Supreme Being, no matter what his religious sentiments might be, would be qualified to hold any office, etc., and an atheist would be disqualified. I believe that this was and still is the intention of this section. As a modern and more enlightened alternative for the phrase which I propose to strike out, would substitute one expressing merely a belief in a future life. If the transgressor is punished before death, as may often happen, it would be illogical to suppose that he would also be punished in the future life. If the virtuous man is rewarded before death, as may also happen, would he again be rewarded in the future life?"

Letter to the Secretary, May 30, 1920, from Mr. Thiel.

"The present reading may disqualify certain agnostics, who may be worthy citizens. I am not an agnostic, but suggest that their view point be considered."

Letter to the Secretary from Mr. W. J. Fitzgerald.

AMENDMENT SUGGESTED BY THE HONORABLE R. H. KOCH, OF POTTSVILLE, PA.:

" 'Almighty God' is mentioned in the preceding, or third section and I see no reason why it should not be mentioned in the fourth section. There are heathen gods and pagan gods, and I think the words, 'a God' may be considered in too generic a sense, although 'God' begins with a capital letter. 'A' is indefinite; 'The God' would be better, and 'God of the Bible' would put the matter beyond question."

Section 5-A. RIGHT TO VOTE. (Calendar for May 11, page 2.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"The proposed new section seems to be unnecessary except as to the matter of sex, the Fifteenth Amendment to the Federal Constitution covering the question of race and color. The meaning of the section as proposed, insofar as it relates to holding office, is not clear. If it means that there shall be no distinction of sex in respect to holding office, it is bad. There are some offices that ought to be held by women and some which ought to be held by men. For example, it is wise to have matrons in police stations, jails, asylums, and other places where women and girls are detained, and the Legislature should not be denied the power to exclude men from holding the office of such attendants. It would also be unwise to forbid laws prescribing the sex of certain police officers and of officers whose duties may be arduous as to be unsafe for women. If the proposed section is intended to mean that persons of either sex may hold any office except where the General Assembly (for reasons deemed adequate by the Supreme Court) otherwise provides, it would be well to say so, and thereby save the Supreme Court from the necessity of amending the Constitution by judicial interpretation. The right to vote will give women such political power that it is inconceivable that laws will be made to deny them the right to hold office which they deem themselves fitted to hold."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"As this section now reads the question might be raised whether it is self-enacting, or whether it might require legislation amending our present election and taxation laws by inserting therein the word 'female.' To avoid all doubt, we

would suggest that a clause be added reading into the election and into the taxation and assessment laws the construction that wherever the word 'male' is used, 'female' is to be included."

Letter to the Secretary, April 5, 1920.

AMENDMENT SUGGESTED BY WATSON B. ADAIR, OF PITTSBURGH:

"I have omitted reference to race and color, thinking that that point is sufficiently covered by the Federal Constitution, though the words, 'race, color or,' could be inserted before the word 'sex,' if it is desired to make the section more comprehensive."

Letter to Prof. Thorpe, April 16, 1920.

Section 6. TRIAL BY JURY. (Calendar for May 11, page 2.)

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY.

"So much time and expense can be saved by trying ordinary claims for debts before a judge without a jury that it seems wise to require that those who want jury trials in such cases should pay for them.

"The necessity for a unanimous verdict in other than the most important crimes does not seem to exist. The power of one juror to control or prevent a verdict is frequently abused."

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH.

"Ex-President Judge Way of the Allegheny County Court is authority for the statement that in contract cases a jury trial takes six times as long to dispose of as a non-jury trial. The jury trial, therefore, is an added burden to the community and in equity the expense should be borne, at least in part, by the person demanding the same. The popular desire for jury trials is limited to crimes and personal injuries, libel, etc., included in the word 'torts.' "

Letter to the Secretary.

AMENDMENT SUGGESTED BY THOMAS H. GREER, OF BUTLER, PA.

"You may have experienced the results occasioned by the rule that requires unanimity of twelve jurors to find a verdict in a civil or criminal trial. That law is possibly the most antiquated and absurd law that the public has to deal with. I am informed that in Ohio, and possibly other states, that nine of twelve jurors may find a verdict which is consistent with common sense and surely cannot defeat the ends of justice so long as we persist in jury trials. A majority of either the Supreme or Superior Court is all that is necessary and why should there be a unanimous verdict by a jury?"

Letter to the Secretary, March 6, 1920.

Section 7. FREEDOM OF THE PRESS.—LIBEL. (Calendar for May 11, page 3.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.

"This provision necessitates the continuance of the grand jury in Pennsylvania." See further under section 10.

Section 9. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. (Calendar for May 11, page 4.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.

"This provision necessitates the continuance of the grand jury in Pennsylvania." See further under section 10.

AMENDMENT SUGGESTED BY RICHARD E. COCHRAN, OF YORK, PA.

"Section 9 provides that a defendant cannot be compelled to give evidence against himself. While section 10, article VIII, provides that in trials of contested election, etc., no person shall be permitted to withhold his testimony on the

ground that it may criminate himself or subject him to public infamy. This is in direct conflict with section 9, Article I, and I suggest that section 9, Article I be amended so as to read 'except as provided in section 10 of Article VIII of this Constitution he cannot be compelled to give evidence against himself.' "

Section 10. CRIMINAL INFORMATION.—TWICE IN JEOPARDY.—EMINENT DOMAIN. (Calendar for May 11, page 4.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.

"This provision necessitates the continuance of the grand jury in Pennsylvania. I am sure that the grand jury does far more harm than it does good. I have known scores and scores and scores of bills of indictment that were ignored by grand juries where the accused parties should have been brought to trial. I have known instances of men outrageously beaten and cut whose cases were ignored by the grand jury and who were visited with the costs. The grand jury is a secret body. In their oath, the grand jurors swear that, 'The commonwealth's counsel, your fellow's and your own, you shall keep secret.' In the days when 'Men were suspected whom none wished or dared to accuse,' I Bouvier, page 640, 14th Edition, the grand jury was a convenient means, on account of its secrecy, to make a presentment; but there is no occasion for that now. To ignore a bill which is well founded and then to put the costs upon the prosecutor is to do him a great injustice and to leave him without a remedy. Grand jurors too frequently disregard their oath entirely and do as they please with bills of indictment. Corrupt influence or favoritism frequently controls their disposition of indictments. The grand jury is, generally speaking, a useless and costly piece of machinery in the administration of criminal courts and should

be used only to conduct investigations where there is great public clamor of criminal conduct by public officers, on which occasion a grand jury could be specially summoned. To omit the sentence above quoted would put it wholly within the power of the general assembly to say whether the grand jury system, as it at present exists, should be continued."

Section 11. COURTS TO BE OPEN.—SUITS AGAINST COMMONWEALTH. (Calendar for May 11, page 4.)

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH, PA.

"One of the worst absurdities yet remaining in our judicial system is that the Commonwealth, the fountain of justice, may do injustice to its citizens and not pay the penalty. The poorest of townships is liable for not properly maintaining its roads, whereas the richest of commonwealths escapes for similar negligence. The commonwealth is so patent a factor in the road situation to-day that this anomaly should be rectified and the legislature *required* to put the commonwealth in the same position as a turnpike company would be relative to liability. The forum and the executionary process, of course, could be molded to suit the requirements of the commonwealth."

Section 26-B.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"It seems to be true that the civil rights guaranteed by the Constitution apply only to *citizens* of the Commonwealth and not to the *inhabitants* generally. Thus a child born abroad, even though it has lived with its parents twenty years in this country, does not, ipso facto, become a citizen, and may be summarily ejected by arbitrary power. The addition suggested would *not* confer political privileges of non-citizens."

ARTICLE II.

THE LEGISLATURE.

Section 11. POWERS OF EACH BRANCH.—Expulsion.—(Calendar May 11, page 7.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"The Corrupt Practices Acts in the different states were forced to draw a distinction between candidates for mayor, judge, and so forth, on the one hand, and legislative candidates on the other. The legislative candidates, owing to similar sections of other Constitutions, cannot be prevented from taking office, no matter how corrupt they may be. It is submitted that the time has gone by when the Legislature needs this particular protection against the encroachments of the executive, as it may have needed it 150 years ago. Today corruption is the great source of political evil."

Section 15. PRIVILEGES OF MEMBERS.—Calendar for May 11, page 8.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"The underscored words merely carry out the idea emphasized in Section 11."

Section 16. SENATORIAL DISTRICTS.—RATIO.—(Calendar for May 11, page 8.)

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.

"During Governor Pennypacker's term it was absolutely impossible to comply with the provisions of this section, owing to the fact that Lebanon county, if I remember right, was entirely surrounded by other counties entitled to a full ratio and did not itself have even half a ratio. In view of a possible

recurrence of this difficulty, would it not be better that there should be a lack of contiguity between two or more counties forming one district than that there should be so serious a difference in the number of a senator's constituents? If this suggestion is approved the difficulty may be overcome by inserting after 'contiguous territory' the words 'as nearly as may be' or something akin thereto."

Letter to Secretary April 12th, 1920.

Section 18. LEGISLATIVE APPORTIONMENT. (Calendar for May 11, page 9.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"The failure of the Legislature to act promptly in the matter of apportionment has long been a scandal. Therefore the suggested penalty for such failure."

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.

"In the past the legislature has repeatedly failed to obey this provision. Would it not be well, therefore, to provide that if they adjourn without compliance therewith, that the Governor shall appoint a commission of say seven members, whose duty it shall be to make a proper apportionment, which when approved by the Governor shall have all the force of a statutory apportionment; said commission to be drawn from all parts of the State, to have the qualifications of members of the senate, to hold no office of honor, trust or profit under the State or any municipality, and not more than three thereof to be members of any one political party."

Letter to Secretary April 12th, 1920.

ARTICLE III.

LEGISLATION.

Section 3. SUBJECT OF BILLS—ENTITLED.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU.

"The insertion into this section of a requirement that laws extending other laws shall set forth the title of such laws, may upset the rule established by the courts as to the extension of procedure acts. We think it is well settled by a number of cases that an act, which, for instance, attaches to the power of eminent domain, the procedure for the assessment of damages outlined in a prior statute is constitutional, even though the procedure is not re-enacted at length or notice thereof given in the title. The clause of this Section 3, as now drafted might require the citation in the title of such acts which were extended. We would suggest that the word 'extending' be stricken from this section."

Letter to Secretary April 5, 1920.

Section 4. THREE READINGS. — AMENDMENTS. — FINAL VOTE. (Calendar for May 11, page 11.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"This would afford needed publicity and greatly expedite legislative procedure."

AMENDMENT SUGGESTED BY LEGSLATIVE REFERENCE BUREAU.

"The reading of bills at length on three different days in each House is a physical impossibility. The one purpose which this clause serves is to prevent hasty legislative action. No member of the legislature should be placed in the position where he is called upon, in the discharge of his duty, to violate

the Constitution, which by his oath of office, he has sworn to support, obey, and defend. We suggest that the words 'read at length' be stricken out and the word 'considered' be submitted. This will bring the Constitution and legislative procedure into harmony, and relieve conscientious members of the legislature from embarrassment."

Letter to Secretary April 5, 1920.

Section 6. THE REVIVAL AND AMENDMENT OF LAWS.

(Calendar for May 11, page 11.)

AMENDMENT SUGGESTED BY RICHARD E. COCHRAN, OF YORK, PA.

"I think on the subject of Legislation this section in the existing Constitution is much clearer and much better expressed than the proposed substitute."

AMENDMENT SUGGESTED BY LEGSLATIVE REFERENCE BUREAU.

"Section 6 of Article III provided that a law amending, reviving or extending the provisions of a law shall set forth in full the part of the law affected and an amending law shall also set forth in full the part of the law affected. The use of the word 'affected' might be questioned. If this word is used in the first clause of the section as being synonymous with 'amending, reviving or extending,' there could be no objection, but it is possible that the courts might construe this word as requiring, in amending statutes, the citation of a very large part of the act, on the presumption that the proposed amendment affected a large part of the act."

Letter to Secretary April 5, 1920.

Section 6-A. (NEW). When NEW LAWS SHALL BECOME EFFECTIVE. (Calendar for May 11, page 12.)

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY.

"This is deemed a wise provision, not only to clear away any doubt there may be as to when law is effective, but to the end that new legislation may not cause confusion by becoming too speedily effective."

Section 7. SPECIAL AND LOCAL LEGISLATION LIMITED. (No. 11 Calendar for May 11, page 13.)

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR.

"The paragraph on municipalities does not provide for 'towns or villages.' Would it not be wise, therefore, in lieu of the provision 'incorporating cities, towns or villages or changing their charters' to insert 'incorporating municipalities or changing their charters?'"

Letter to Secretary April 12, 1920.

Section 7-A. CLASSIFICATION, ETC. (Calendar for May 11, page 14.)

AMENDMENT SUGGESTED BY MR. H. K. SIEBENECK, OF PITTSBURGH, PA.

"The Workmen's Compensation Act, as at present framed, embraces all classes of employees. There is a supplement excepting farm hands and domestic servants. To have inserted this exception clause in the body of the Act, it was believed generally would have violated the provision against special laws regulating labor. The interpolation suggested would avoid this trouble."

AMENDMENT SUGGESTED BY LEGSLATIVE REFERENCE BUREAU.

"Section 7-A is a new section inserted for the purpose of confirming the power of the legislature in classifying municipalities; also to fix a maximum classification for the several municipalities. As the section is now drafted, the classification made by the general assembly is for the purpose of legislation. The use of this broad term might be construed to upset the present rule laid down by our courts as to the necessity and reasonableness of a classification. In other words a construction might be adopted which would hold any classification legislation good on the ground that it was made for the purpose of legislation."

Letter to Secretary April 6, 1920.

AMENDMENT SUGGESTED BY THE NATIONAL MUNICIPAL LEAGUE.

"We are thoroughly in accord with the purpose which you have had in mind in your draft of Section 7-A, Article III, which is to confer upon the legislature greater freedom in dealing with varying local situations. The effect will be to make the constitution more elastic at this point. We wish, however, to call your attention to the fact that you are here setting up seven classes of counties and school districts and virtually twelve classes of urban districts. We believe this extensive classification to be unwise in that it will confer upon the legislature the whole power of special and local legislation which proved so disastrous to the welfare of the state prior to 1874. The legislature by arranging and re-arranging the classification of counties, cities and boroughs will be able to evade all the salutatory provisions of Section 7, Article III of the present constitution. You are handing back under a new guise the old power which is so generally discredited. In this connection

we would call your attention to the experience of Ohio between 1870 and 1902 during which time the courts permitted the legislature to create many classes of municipalities, with the result that the people of the state were subjected to all the evils of special legislation under another form.

"The indispensable elasticity in laws governing municipalities is secured by the second sentence of our proposed substitute which permits the legislature to pass laws governing the organization and government of any municipality or class, which shall be operative only upon the affirmative vote of the electors within the municipality to be affected. Laws which would otherwise be special or local shall not be deemed to fall under the prohibitions against such legislation. Under our proposed section the rights of the community are thoroughly safeguarded while full provision is made for meeting diverse situations throughout the Commonwealth."

Letter to the Commission on Constitutional Amendment and Revision, April 19, 1920.

Section 8. NOTICE OF LOCAL OR SPECIAL BILLS. (Calendar for May 11, Page 16.)

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU.

"In section 8, Article III, we would insert a clause making it unnecessary to give notice of any bill designed simply for the repeal of a local or special law. The next to the last paragraph of section 7 of this Article contains the provision that 'Laws repealing local and special acts may be passed.' The insertion of this clause leads us to believe that it was not the intention of the framers of the Constitution of 1873 to require the advertising of such bills. Such advertisement is now required by the act of February 12, 1874, P. L. 43, enacted to carry into effect the provisions of Section 8 of Article III.

"It has been repeatedly held that where a general act is passed which effects a repeal of local or special act, notice of this repeal is not required. Why should a different rule prevail when the act is a repealer only of a local or special act? The repeal of local and special acts should be encouraged and not hampered. Their repeal aids uniformity. This notice should not be permitted to stand in the way.

Letter to Secretary April 6, 1920.

Section 10. OFFICERS AND EMPLOYES.—Payments (Calendar for May 11, page 16.)

AMENDMENTS SUGGESTED BY H. K. SIEBENECK AND BY THE CIVIC CLUB OF ALLEGHENY COUNTY.

"It is submitted that this would be a great money saver."

Section 11-A. AMENDMENT SUGGESTED BY THE CHAMBER OF COMMERCE OF PITTSBURGH.

"The division of fines and penalties has been and is the cause of unjust prosecution and the levying of blackmail by irresponsible informers and other persons who have a financial interest in the results of such information. We believe that this grievance should be abolished by the Constitution.

Letter to Secretary April 17, 1920.

Section 13. EXTENSION OF TERMS (Calendar for May 11, page 17.)

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH.

"We are living in a period of great currency depreciation and it may be that the opposite situation of affairs will have been reached by 1931 when the dollar may have double its normal purchasing capacity. A decennial adjustment of salaries is obviously expedient.

AMENDMENT SUGGESTED BY G. W. WILLIAMS, OF PITTSBURGH.

"It does not seem to me that there is any good reason for providing that the salary or emoluments of a judge may be increased during his term of office. The settled policy of the Commonwealth has always been otherwise."

Letter to Secretary March 30, 1920.

Section 16. PAYING OUT PUBLIC MONEYS (Calendar for May 11, page 19.)

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.

"For a long time I have felt strongly that the State's money should not be appropriated to institutions not under its direct control. In the Penna. Bar Association Report for 1902 (pages 3 to 11) will appear an article on the subject, showing the genesis of these appropriations and the reasons there against. No one has answered, so far as I know, Judge Sharswood's statement in regard thereto appearing on page 11."

Letter to Secretary April 12, 1920.

AMENDMENT SUGGESTED BY THE HON. C. STUART PATTERSON, OF PHILA.

"Section 15 Article III requires the Governor to submit a budget. In my judgment this will not be effective unless it is supplemented by some restraint on the introduction by private members of bills making appropriations which have not been submitted to and approved by the Governor. Otherwise there will be log-rolling, that is, A will move an appropriation, and obtain support for his measure by promising to vote for like measures urged by other members. The only way in which the English Parliament makes its budget system effective is by a standing order forbidding the consideration of individual

appropriations by bills which have not been submitted to and approved by the responsible ministry."

Letter to Secretary April 16, 1920.

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU.

"In order to protect the Governor in his action on the appropriation bill, this section should contain a clause making it mandatory upon the general assembly to enact all revenue measures and present them to the governor at least ten days before the adjournment, as is provided for the general appropriation bill."

Letter to Secretary April 6, 1920.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEKHENY COUNTY.

"It is recommended that in the second paragraph of section 15, where the word 'beneficiaries' occurs, it should be changed to read 'institutions, corporations and associations.' This change being suggested because the word 'beneficiaries' implies a selection from among the agencies of any class; whereas, all agencies conforming to the imposed standards should obtain state aid as a *right* not as a *favor.*"

Section 18. CERTAIN APPROPRIATIONS FORBIDDEN (Calendar May 11, page 21.)

AMENDMENT SUGGESTED BY JOHN HIEL, OF PHILADELPHIA.

"It seems illiberal and uncharitable to prohibit appropriations to communities, as is apparently done in this section. The legislature should be free to afford financial aid to communities that may from time to time be suffering from grave disasters or calamities."

Letter to Secretary March 30, 1920.

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU.

"In the budget system established by section 15, it clearly appears that no appropriations are to be made to separate institutions, but that all appropriations for charitable, benevolent or educational institutions are to be made to the classes of institutions in lump sums. If, therefore, an institution cannot be named in an appropriation bill, the question whether or not an institution is denominational or sectarian is no longer a legislative matter, but is a fact to be ascertained by the agency of the Commonwealth, which make the disbursement. It is suggested that this section 18 provide that no *disbursement of appropriations* made for charitable, educational or benevolent purposes, shall be made to any denominational or sectarian institution."

Letter to Secretary April 6, 1920.

AMENDMENT SUGGESTED BY THE REV. C. H. FORNEY, OF HARRISBURG.

"I believe with Mr. McSparran, that civil pensions are an injustice to the tax payer. I am also fully convinced that successful contradiction of the following five points can be challenged:

1. That the beneficiaries of these gratuities enter the service of the State, or of municipalities, voluntarily and of free choice.

2. That the service they render, the labor they perform, the work they do is, as a rule, less, and not more, difficult, enervating, wearisome and exhausting, nor accompanied with greater danger to life and limb, than in other callings.

3. That a smaller percentage of these beneficiaries contract vocational diseases, making the evening of their lives less enjoyable and serviceable than those in many other vocations.

4. The renumeration which they receive is as large as, and in many instances larger than, citizens generally receive for similar work in other callings.

5. That the service which they render is not of a higher order nor greater efficiency because of the prospective pension."

Letter to the Secretary April 21, 1920.

Section 19. APPROPRIATIONS FOR THE SUPPORT OF WIDOWS AND ORPHANS OF SOLDIERS. (Calendar for May 11, page 23.)

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU.

"Section 19, Article III, which permits appropriations to institutions wherein widows of soldiers are supported or assisted or orphans of soldiers are maintained and educated, seems to be inconsistent with the budget provisions of section 15, which prohibits any appropriation to separate institutions. These appropriations would in their nature be charitable or benevolent appropriations. There are possibly two ways in which the inconsistency might be remedied: First, by inserting a saving clause into section 15, to the effect that the prohibition against separate appropriations to individual institutions would not be applicable to institutions supporting widows or orphans of soldiers: Secondly, by providing in this Section 19 that the appropriation should be made by the general assembly to institutions of this character as a class."

Letter to Secretary April 6, 1920.

Section 22. INVESTMENT OF TRUST FUNDS (Calendar for May 11, page 23.)

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH AND THE CIVIC CLUB OF ALLEGHENY COUNTY.

"It is recommended that this section be not changed as proposed. It is believed to be unwise to authorize the investment of trust funds in bonds of private companies. Plenty of public bonds will be available for the next twnety years."

Section 22-A. (New) Calendar for May 11, page 23.

AMENDMENTS SUGGESTED BY CORTEZ H. JENNINGS, OF TOWANDA, PENNA.

"Under existing laws tanneries are allowed to dump any sort of refuse into the streams, the consequence of this is, that farmers living on streams below tanneries are obliged each year to treat their cattle to avoid anthrax poisoning, and this is not sufficient as riparian owners below tanneries lose more or less stock each year because of this poison * * * * * I can see no reason why tanners should be exempt * * * * * If common reports are to be believed their profits are ample enough so that they could easily afford to sterilize or purify the liquids coming from the tanneries and discharged into the streams. It is to be assumed that if these liquids contain matter poisonous to live stock and human beings it probably has a deleterious effect on the fish."

Letter to Secretary April 17, 1920.

Section 25. LEGISLATION DURING SPECIAL SESSIONS.

(Calendar for May 11, page 24.)

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.

"Would it not be well to allow the Governor to submit to the legislature, when in special session, any other matter than that named in the call, if it is, in his judgment, of such importance as to call for its immediate consideration."

Letter to Secretary April 12, 1920.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

Commonwealth of Pennsylvania

THE COMMISSION ON

Constitutional Amendment and Revision

MEMORANDA and BRIEFS No. 42

JUDGES—APPOINTIVE VS. ELECTIVE SYSTEM.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman.

Dear Sir: I understand you desire me to submit in the form of a brief the substance of an argument I prepared some time ago on an appointive system for judges of courts of record.

I comply with the suggestion with hesitation, because, while the brief is perhaps not devoid of information, it differs from all other briefs heretofore and hereafter submitted by me in being an argument in favor of the amendment suggested on page 54 of the May 11, 1920, Calendar, which is as follows:

Section 27-B (New). (To be submitted separately to the electorate).

> *The Governor shall nominate and by and with the advice of a majority of all the members of the senate appoint the judges of all courts of record. The adoption of this section shall be regarded as superseding all provisions in the constitution for the election of such judges.*

My political past and my known present position on public questions is such that I can advocate the constitutional change which I now call to your attention without danger of being accused of doing so on account of a conscious or unconscious desire to keep things as they are, or because of any enthusiasm for extreme conservative posi-

tions on public questions. Indeed it is as a progressive and as one vitally interested in social legislation that I ask you to consider the advisability of giving to the electorate of the state the right to pass on the question whether they desire to substitute an appointive for an elective judiciary. The election of judges is, I believe, unsound theoretically, and practically it does not work as well as the appointive system.

I have an abiding faith in democracy. The cure for most of the evils under which we suffer is more, not less, democracy. There is no educational force in the community comparable with the ballot; no evil greater than any curtailment of the franchise. But all this does not mean that the people should elect all their servants. Members of the legislature and those executive officers who are charged with the duty of initiating or carrying out policies, should be selected by the electorate. But the very qualities which make the electorate the only body to ultimately decide public policy, unfits them for the very different task of selecting the trained expert to perform a definite designated service. We do not elect our doctors who man our health department, the engineers who lay our roads, or the forester who becomes our Commissioner of Forestry. And yet all these employments require no more highly trained specialists than the business of the judge. It seems to me to be axiomatic that wherever the duty to be performed is a ministerial duty, into which questions of policy do not enter, and which require for their efficient performance years of special preparation, then the public officer to perform that duty should be selected by some other process than that of election. While this statement is, I believe, of almost universal application, it is peculiarly applicable to the judiciary. We often hear the expression "judicial temperament." By this, I take it, we mean a temperament making it natural for the possessor to analyze a problem on all sides, to weigh different points of view and reach a conclusion only after careful consideration, free from prejudice. Such a temperament, while it by

no means incapacitates a man from making a public expression of his carefully thought out opinion, usually does make him shun the stump and the election contest.

Had we no experience to guide us, it is fairly certain that, in the long run, the judicial business would be better done and as a consequence the people would have a greater confidence in the administration of justice in the state in which the judiciary were appointed, not elected. The business of the administration of justice is a highly specialized business, and the turmoil of an election is not the machinery for the selection of experts competent to handle it and from which we have reason to hope for the best results.

We are, however, fortunately not in a position of being obliged to depend on purely theoretical speculation. We are having to-day, in this country, practical demonstration of the comparative results of elective and appointive judicial systems. Our Federal judiciary is appointive. There are states, like Massachusetts, that have never had any other than the appointive system. We have the material at our hand for a comparative study of results. My contention is that this study leads to no uncertain conclusion. If there is any place where it might be doubted whether an appointive judiciary system would in practice prove satisfactory, it would be the local Federal judiciary. The great size of the United States makes it impossible that the President should know the local peculiarities and needs of each district, and also makes it impossible for him to make personal and thorough investigation of the fitness of his appointees, and yet there is hardly a member of the Commission who would advocate the election of local Federal judiciary. Not that Presidents have not made grave errors in appointments: they have. But by and large we all know that the results are good. Take Massachusetts. Every lawyer on the Commission has a considerable acquaintance at the bar among the people of that state. Again it is true that we have heard criticisms of particular appointees, but have we not all been im-

pressed with the general and universal satisfaction which the appointive system gives in that state? The opinion that the appointive system works well is not confined to the members of the bar of Massachusetts. As far as I have been able to observe (and I have taken trouble to make inquiries because I have long been interested in this subject), the satisfaction with the appointive system in Massachusetts is general among all classes of people.

I need not call your attention to the fact that in a state like Pennsylvania, where we have had the elective system since the Constitution of 1838, there is a very widespread belief that judges should be appointed. I do not say that this belief is a settled conviction on the part of the majority of the people, or even a majority of the members of the bar, but we have only to ask individual members of this Commission to know that there at least exists a difference of opinion on this subject.

There is one argument against an appointive judiciary to which reference should be made. It is this: With us a judge passes on the constitutionality of acts of the legislature. The State Constitution contains a Bill of Rights. Under the varying expressions in the Bill of Rights, it is the duty of the courts to declare unconstitutional any act which deprives a person of his liberty or property without due process of law. Practically this means that it is the duty of the judge to declare unconstitutional any act the provisions of which violate those fundamental principles of personal liberty and right to acquire, possess and enjoy property which are the heritage of English-speaking people. The practical application of these fundamental principles necessarily vary from time to time with shifting economic conditions. Thus it is that I have heard publicists argue that an appointive judiciary would be apt to be out of touch with social and economic conditions, prone to hold legislation designed to meet real and pressing social evils unconstitutional because of a lack of understanding of living conditions. A plausible theory is this, on its face, but it does not bear the test of actual experience.

Take the great social laws of our day that have run the gauntlet of the courts. It was the elected Supreme Court of Illinois that held an act regulating the hours of labor which applied only to women's labor unconstitutional, though subsequently that decision was reversed. It was the elected Supreme Court of Pennsylvania that held a law requiring wages to be paid in money—thereby prohibiting payment in store orders—unconstitutional as denying to the workman the right of free contract, and it was the appointed Supreme Court of the United States that upheld the constitutionality of such regulation.

It was the elected Appellate Court of New York which held the first workmen's compensation act of that state unconstitutional—a decision which shocked the nation and which was instantly reversed by a change in the state constitution. The appointed Supreme Court of the Unites States had no difficulty in sustaining workmen's compensation legislation.

Those who have been interested in social legislation in the past twenty years know that all advocates of such legislation have felt a confidence that the appointive Federal Supreme Court and the appointed Supreme Court of Massachusetts were the two Courts in the country most inclined to support the constituionality of legislation of this character. There is a reason for this. The appointive judge is more apt to have knowledge of the law, both constitutional and ordinary law, than the elected judge. This greater knowledge is obtained by the man with the instinct of the student. It is the student's instinct which makes the specialist in any line of human endeavor. Instead, therefore, of an appointed judiciary being out of touch with life, on the average the appointed judge is more apt to have that touch with the broad essential facts of life underlying social movements which lead to the enactment of such far-reaching legislation as workmen's compensation laws or minimum wage laws.

I have said that I advocated an appointed judiciary because I am a progressive deeply interested in modern special legislation. I trust I have made plain the reason for this statement.

I do not advocate that you should place in the Constitution a provision that there should be an appointive judiciary without appending thereto the further provision that the proposal should be separately submitted to the electorate. Whatever the form in which the Commission's recommendation will be ultimately embodied—whether in the form of a series of amendments or of a completely new constitution—there are certain fundamental changes, and this is one of them, which should be submitted separately. For this there is a practical reason. Much as I am interested in the matter of the change of which I have rpoken, I do not advocate that a change likely to involve so much discussion should be placed in the new constitution to be voted on as a necessary part of that Constitution by all those who would have any of the many other good things which the Commission will doubtless place in the new or revised constitution. A part from this practical consideration, which would lead any man to avoid, if possible, placing all the work of the Commission or a subsequent constitutional convention on a single vote of the people for or against, I submit that the electors have a right to pass separately on any fundamental and important change which can be separatley submitted.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

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MADE IN ANY SIZE OR STYLE
TO DUPLICATE, SEND ABOVE NUMBER